1 2 3 4 5 6 7	Steven A. Sherman, Esq., Bar No. 113621 FERGUSON, PRAET & SHERMAN A Professional Corporation 1631 East 18th Street Santa Ana, California 92705-7101 (714) 953-5300 Telephone (714) 953-1143 Facsimile ssherman@law4cops.com Attorneys for City of Garden Grove Defend	ants
8	UNITED STATES D	ISTRICT COURT
9	CENTRAL DISTRICT	OF CALIFORNIA
10		
11	QUYEN KIM DANG, INDIVIDUALLY)	NO. SACV10-00338 DOC(MLGx)
12	AND AS GUARDIAN AD LITEM FOR) KENNY MINH CAO TRAN, A MINOR,)	DEFENDANTS' REPLY TO
13	AND PERSONAL REPRESENTATIVE) OF ANDY TRAN, DECEASED;)	PLAINTIFFS' OPPOSITION TO SEPARATE STATEMENT OF
14	KENNY MINH CAO TRAN, A MINOR) BY AND THROUGH HIS GUARDIAN)	UNDISPUTED FACTS AND CONCLUSIONS OF LAW
15	AD LIETM, QUYEN KIM DANG; NAM) VAN TRAN, BIOLOGICAL FATHER)	DATE: July 25, 2011
16	OF ANDY TRAN, DECEASED; BUA THI PHAN, BIOLOGICAL MOTHER OF ANDY TRAN, DECEASED,	TIME: 8:30 a.m. CTRM: 9-D
17	Plaintiffs,	
18	v.	
19	CITY OF GARDEN GROVE; GARDEN)	
20	GROVE CHIEF OF POLICE JOSEPH)	
21	M. POLISAR; GARDEN GROVE) POLICE OFFICER GENDREAU;)	
22	GARDEN GROVE POLICE OFFICER) KARSCHAMROOM; TASER)	
23	INTERNATIONAL, INC., AND DOES 1) TO 10, INDIVIDUALS; AND ROES 1	
24	TO 10, ENTITIES, INCLUSIVE,	
25	Defendants.)	
26)	
27		
28		

ADJUDICATION NUMBER 1

THE OFFICERS' USE OF FORCE WAS REASONABLE UNDER THE TOTALITY OF CIRCUMSTANCES, THUS BARRING 42 U.S.C § 1983 CLAIMS

DEFENDANTS' UNDISPUTED PLAINTIFFS' OPPOSITION DEFENDANTS' REPLY FACT & EVIDENCE 1. On September 3, 2008, at 1. **Disputed:** Neither the 911 1. Neither the 911 audio nor the CAD approximately 11:29 a.m., GGPD Transcript nor the Dispatch CAD state dispatch refer to "5150" as claimed by officers Richard Gendreau and Daniel anything about a "violent, mentally ill Plaintiffs, but do refer to [Andy Tran] male" trying to break into residence nor Karschamroon were dispatched to a as being crazy, with weapons, and report of a "violent, mentally ill male" assaulting anyone. They both say this having committed an assault. Although trying to break into the residence, that was a 5150 call and Andy needs to be requests were made to take [Andy] to someone had been assaulted, and that taken to a hospital. The 911 caller the hospital, that does not constitute a genuine issue of material fact there was an unknown "weapon" never said Andy had weapons, the involved. dispatcher made a mistake. precluding summary judgment; officer 1. Karschamroon Decl., $\P\P$ 1-5; 1. Defense Exhibit 2, Transcript/ actions are judged as to all information Gendreau Decl., $\P\P$ 1-5; Exhibit 2, Audio of 911; Defense Exhibit 3, known or relied upon. Transcript/Audio 911 Recording; Dispatch CAD. As will be shown 1. Karschamroon Decl., $\P\P$ 1-5; Exhibit 3, Dispatch CAD. throughout Gendreau's and Gendreau Decl., $\P\P$ 1-5; Exhibit 2, Karschamroon's Declaration are in Transcript/Audio 911 Recording; inconsistent with both their Internal Exhibit 3, Dispatch CAD.

	Affairs interviews and Deposition	
	Testimony.	
	Supporting Evidence: Exhibit C,	
	Deposition of Gendreau, pp. 305: 5-25;	
	Exhibit I, Gendreau GGPD Internal	
	Affairs Interview, pp. 17-18.	
2. Police Dispatch as well as the CAD	2. Disputed : Dispatch apparently did	2. Plaintiffs do not dispute Defendants'
printout noted the male subject (Andy	not understand 911 call because the	UMF, but rather argue that police
Tran) was a "mental case" and "crazy,"	911 caller said nothing about weapons.	dispatch erroneously concluded that
that he had weapons, and that a crying	Dispatch does indicate major language	Andy had weapons. This does not
child could be heard in the background.	barrier between 911 caller and	constitute a genuine issue of material
The reporting party indicated that he	despatch. The CAD printout clearly	fact precluding summary judgment;
was dizzy and he would not answer	shows this was a 5150 call and	officer actions are judged as to all
questions about Andy Tran's location,	Gendreau testified he was given further	information known or relied upon, and
and kept repeating "send someone right	information of Andy's prior mental	it remains undisputed that Dispatch
now, send someone right now. Take to	health history. The CAD clearly states	relayed information that Andy was
hospital."	Andy needs to be taken to the hospital.	crazy, with weapons, and had
2. Karschamroon Decl., ¶ 6 Gendreau	Supporting Evidence: Exhibit C,	committed an assault. Further, the
Decl., ¶ 6; Exhibit 2, Transcript/ Audio	Deposition of Gendreau, pp. 305: 5-25;	Plaintiffs citation to Officer Gendreau's
911 recording; Exhibit 3, Dispatch	Exhibit I, Gendreau GGPD Internal	deposition testimony does not support
CAD.	affairs Interview, pp. 17-18.	their assertion that he was aware of

Andy's mental health history before
arriving on scene, but rather only that
he did not recall telling Internal Affairs
that he acquired such knowledge. In
any event, such knowledge would be
immaterial in light of Andy's actual
resistance while being detained, and the
totality of the circumstances
confronting the officers during that
detention.
Transcript/Audio 911 Recording;
Exhibit 3, Dispatch CAD; Gendreau
Depo., 305:5-25

- 3. Officers Karschamroon and Gendreau arrived at approximately 11:36 a.m., with Karschamroon first to arrive. He noticed a male individual who appeared to be trying to break into or enter the residence through a window, and broken screen nearby. As Officer Karschamroon approached him, his body halfway into the window and he appeared to be trying to grab something from inside.
- 3. Karschamroon Decl., \P 7; Exhibit 3, Dispatch CAD.

3. **Disputed:** Mark Zimmerman testified he never saw Andy place any portion of his body in the window; in fact he testified he began yelling as Andy taking off screen and Andy then turned towards him at the same time Karschamroon arrived.

Supporting Evidence: Exhibit A, Deposition of Mark Zimmerman, pp. 51:9-22, 52:1-24.

3. The Plaintiff's citation to Mark Zimmerman's deposition does not support their assertion. Zimmerman testified that Andy stopped "directing his attention towards opening the window and getting in the house" after Officer Karschamroon ordered Andy to stop. In any event, this does not constitute a genuine issue of material fact precluding summary judgment; it is immaterial in light of Andy's actual resistance while being detained, and the totality of the circumstances confronting the officers during that detention.

Zimmerman Depo., 50:1-19, 52:7-16

- 4. Officer Karschamroon was aware through Dispatch the subject's name was Andy Tran, so he called out "Andy" three to four times to get his
- 4. **Disputed:** Officer Karschamroon testified he called Andy by his name Andy and he was uncertain if he learned Andy's name from hearing Mr.
- 4. The Plaintiffs do not dispute Officer Karschamroon called Andy by name, only the source of that information.

 Further, the cited deposition testimony

attention. Andy stopped, slowly turned around, and faced Officer

Karschamroon. Andy was instructed to come down from the porch, which he eventually did, approaching Officer

Karschamroon with his hands at his sides.

4. Karschamroon Decl., $\P\P$ 8-10.

Zimmerman saying it or hearing Andy's name from dispatch.

Karshamroon testified Andy responded immediately and never testified he yelled 3-4 times.

Supporting Evidence: Exhibit B, Deposition of Daniel Karschamroon, pp. 245:15-25; 246:1-4. does not indicate how many times
Officer Karschamroon called Andy's
name. The remainder of Defendants'
UMF remains unchallenged. In any
event, the Plaintiffs' evidence does not
constitute a genuine issue of material
fact precluding summary judgment; it is
immaterial in light of Andy's actual
resistance while being detained, and the
totality of the circumstances
confronting the officers during that
detention.

Karschamroon Depo., 245:15-25, 246:1-4

- 5. Officer Karschamroon could Andy had a blank stare and appeared to be confused or unsure of what was going on. Andy stopped his approach when he was approximately 20 feet from the officer, who then asked Andy to come closer. As Andy slowly approached to
- 5. **Disputed**: Karschamroon testified Andy had a confused, puzzled look on his face and appeared in need of medical help. Karschamroon testified he told Andy to stop when he was 10-15 feet away and put his hands on his head and he complied. He never
- 5. Plaintiffs' evidence does not constitute a genuine issue of material fact precluding summary judgment; it is immaterial in light of Andy's actual resistance while being detained, and the totality of the circumstances confronting the officers during that

within 10 feet of Officer	testified Andy ever stopped before	detention. In any event, the deposition
Karschamroon's location, he was	being told to do so and was told to	testimony of Officer Karschamroon
instructed to stop. Andy stopped, but	come closer.	cited by Plaintiffs is consistent with
maintained his blank expression.	Supporting Evidence: Exhibit B,	Defendants' UMF, namely, that Andy
5. Karschamroon Decl., $\P\P$ 11, 12	of Daniel 244: 15-25,259: 1-7,257: 15-	was instructed to stop either "10 feet"
	22,276: 19-25, 279: 14-16; Exhibit J,	or "10-15 feet" from Officer
	Karschamroon GGPD Internal Affairs	Karschamroon's location. The cited
	Interview, pp. 5-6.	deposition testimony does not include a
		question whether Andy stopped at any
		time prior to being so instructed, and
		would be an immaterial variance
		regardless.
6. Andy was instructed to put his hands	6. Undisputed.	6. Undisputed
on top of his head and turn around, and		
he slowly complied with the directive.		
Officer Karschamroon then approached		
Andy and told him to interlock his		
fingers, which he did. Andy never		
spoke, but did appear to understand		
what was being said.		
6. Karschamroon Decl., $\P\P$ 13, 14		

7. **Disputed:** Neither the 911

- 7. Grabbing Andy's hands, Officer
 Karschamroon sought to reassure him
 by saying "there's nothing wrong,"
 "we're just here to help you," and to
 "calm down" and "relax." However, it
 was important to get Andy secured and
 handcuffed as the call indicated he was
 a violent mental individual with a
 weapon.
- 7. Karschamroon Decl., ¶¶ 14

Transcript nor the Dispatch CAD state anything about a "violent, mentally ill male" trying to break into residence nor assaulting anyone. They both say this was a 5150 call and Andy needs to be taken to a hospital. The 911 caller never said Andy had weapons, the dispatcher made a mistake. Given most of Karschamroon's Declaration is vastly different than his Internal Affairs Interview and Deposition Testimony anything he says he did is subject to impeachment now for prior inconsistent statements, thereby everything in his Declaration should be viewed with suspicion.

Supporting Evidence: Defense Exhibit 2, Transcript/Audio 911; Defense Exhibit 3, Dispatch CAD.

7. Plaintiffs' evidence does not dispute that Officer Karschamroon attempted to calm and relax Andy, nor the nature of the call received by Dispatch. Neither the 911 audio nor the CAD dispatch refer to "5150" as claimed by Plaintiffs, but do refer to [Andy Tran] as being crazy, with weapons, and having committed an assault. Although requests were made to take [Andy] to the hospital, that does not constitute a genuine issue of material fact precluding summary judgment; officer actions are judged as to all information known or relied upon.

Karschamroon Decl., ¶¶ 1-5; Gendreau Decl., ¶¶ 1-5; Exhibit 2, Transcript/
Audio 911 Recording; Exhibit 3,
Dispatch CAD.

- 8. As the first handcuff went on Andy's right wrist, his hands immediately tensed up into fists.

 Officer Richard Gendreau arrived Officer Karschamroon was trying to separate Andy's now-clenched fists.
- 8. Karschamroon Decl., ¶ 15

- 8. **Disputed:** Officer Karschamroon never told Internal Affairs Andy's hand ever balled into fists and he testified repeatedly that Andy's hands always remained interlocked after he was told to do so and he never saw Andy's hands ball into fists. Karschamroon further testified he did not know whether Andy's tension was a result of his attempt to follow the last command given to interlock his fingers. He also testified Andy was never aggressive. Supporting Evidence: Exhibit J, Karshamroon GGPD Internal Affairs Interview, pp. 7-8; Exhibit B, Deposition of Daniel Karschamroon, pp. 261:12-18, 264:17-20, 265:13-18, 268:9-10, 270:10-11, 281:9-25, 284:1-25, 285:1-6.
- 8. Plaintiffs argue semantics but do not dispute any material fact. Officer Karschamroon testified at his deposition that when a handcuff was placed on Andy's right wrist, Andy "tensed" and Officer Karschamroon "could feel his fingers closing, kind of curling up from that interlocked position" and "close up as if the fingers were curling." Officer Karschamroon also stated in his deposition that Andy was "actively resisting" and that he "thought it might turn violent." Karschamroon Depo., 321:22-322:22, 362:12-17, 366:14-19

- 9. Officer Gendreau noticed the struggle to get Andy's arms behind his
- 9. **Disputed:** Officer Gendreau said he walked fast and did not run. Officer
- 9. Plaintiffs do not dispute any material fact, argue semantics, and

back, so he immediately ran over to assist. Officer Gendreau was told that one handcuff was secured, but that Andy was not allowing himself to be cuffed. Officer Karschamroon had a concern that the encounter might turn violent due to Andy's reaction when the first handcuff was placed on his wrist.

9. Karschamroon Decl., ¶¶ 16, 17;

Gendreau Decl., $\P\P$ 7, 8

Karschamroon testified he never struggled with Andy is Gendreau's presence nor tried to force Andy's hands behind his back. Karschamroon never said Andy would not allow self to be handcuffed and said he told Gendreau Andy was complying butr hands tensed when placed first handcuff on. Also given Karschamroon and Zimmerman disagree with most of what Gendreau said occurred and both Gendreau and Karschamroon have now filed Declarations which are filled with inconsistent statements from their Internal Affairs Interviews and Deposition Testimony their Declarations should be viewed with suspicion. Supporting Evidence: Exhibit C,

mischaracterize testimony. Mark Zimmerman confirmed that Officer Gendreau approached at "a pretty fast pace." Officer Gendreau testified that Officer Karschamroon told him that Andy was tensed up and that he couldn't get Andy's hands behind his back into a handcuffing position. This is consistent with Officer Karschamroon's testimony that he told Gendreau that Andy was complying and tensed up after one handcuff was secured. Nothing in the cited testimony disputes that Andy continued to resist after Gendreau arrived. Further, Mark Zimmerman testified that Officer Gendreau did assist Officer Karschamroon by putting "his hands on Andy's hands or on the other officer's hands or in that vicinity" for "about 20

	Depositio of Richard Gendreau, pp.	seconds" in what appeared to him as an
	175:1-25, 176:1-25, 177:1-5, 2-6:19-	effort to "keep more control" of Andy.
	25; Exhibit B, Deposition of Daniel	Zimmerman Depo., 92:19-25, 93:16-
	Karschamroon, pp. 285:11-13;	19, 209:7-22; Gendreau Depo.,
	Karschamroon GGPD Internal Affairs	175:20-24; Karschamroon Depo.,
	Interview, pp. 9.	285:11-14.
10. Andy continued to resist, failed	10. Disputed: Officer Karschamroon	10. Plaintiffs' evidence does not
to obey commands, and did not speak.	had full control of Andy and there was	dispute any material fact, and does not
Officer Gendreau could see that Andy's	never a struggle between the two.	indicate that Officer Karschamroon had
method of resistance was "complete	Officer Karschamroon testified he	full control of Andy or that there was
rigidity"; both of his arms were up, his	never struggled with Andy is	no resistance. Plaintiffs ignore Officer
fists were balled, and he was shaking.	Gendreau's presence nor tried to force	Karschamroon testimony that when a
Despite Officer Karschamroon's best	Andy's hands behind his back.	handcuff was placed on Andy's right
efforts to pull Andy's arms down	Karschamroon never said Andy would	wrist, Andy "tensed" and Officer
behind his back, his arms would not	not allow self to be handcuff and said	Karschamroon "could feel his fingers
move.	he told Gendreau Andy was complying	closing, kind of curling up from that
10. Karschamroon Decl., ¶ 16	but hands tensed when placed first	interlocked position" and "close up as if
Gendreau Decl., ¶ 9	handcuff on. Also given	the fingers were curling." Officer
	Karschamroon and Zimmerman	Karschamroon also stated in his
	disagree with most of what Gendreau	deposition that Andy was "actively

	said occured and both Gendreau and	resisting" by not allowing his arms to
	Karschamroon have now filed	be pulled apart and providing tension to
	Declarations which are filed with	pull his arms together, and that he
	inconsistent statements from their	"thought it might turn violent."
	Internal Affairs Interviews and	Nothing in Plaintiffs' cited testimony
	Deposition Testimony their	disputes that Andy continued to resist
	Declarations should be viewed with	after Gendreau arrived. Further, Mark
	suspicion.	Zimmerman testified that Officer
	Supporting Evidence: Exhibit C,	Gendreau did assist Officer
	Deposition of Richard Gendreau, pp.	Karschamroon by putting "his hands on
	175: 1-25, 176: 1-25, 177: 1-5, 206:	Andy's hands or on the other officer's
	19-25; Exhibit B, Deposition of Daniel	hands or in that vicinity" for "about 20
	Karschamroon, pp. 285: 11-13;	seconds" in what appeared to him as an
	Karschamroon GGPD Internal Affairs	effort to "keep more control" of Andy.
	Interview, pp. 9.	Karschamroon Depo., 321:22-322:22,
		280:12-23, 362:12-17, 366:14-19,
		Zimmerman Depo., 92:19-25, 93:16-
		19, 209:7-22.
11. To prevent a possible escape,	11. Disputed: Officer Karschamroon	11. Plaintiffs do not dispute any
Officer Gendreau moved in front of	testified he was a foot from Andy and	material fact precluding summary
Andy. From that position, he could see	1-3 feet from Gendreau and He never	judgment. The assertion that Andy did

	_	
that Andy was shaking and he began to	heard Andy growl or see Andy shaking	not try to escape does dispute Officer
growl. Andy was not blinking, his	other than when Karschamroon shook	Gendreau's motivation for positioning
pupils appeared to be dilated, and he	Andy hands, which moved, to let Andy	himself in front of Andy. Further,
had saliva coming from the corner of	know he was still behing him.	Officer Karschamroon was positioned
his mouth, almost as though he was	Gendreau testified he never feared	behind Andy, and was not in a position
foaming at the mouth. Officer	Andy would flee or run. Karschamroon	to see Andy's face at the time he was
Gendreau felt like Andy was looking	testified Andy never made a movement	tased. As to the issue of Andy
straight through him.	consisting with fleeing or running away	growling, Mark Zimmerman testified
11. Karschamroon Decl., ¶ 16	Supporting Evidence: Exhibit B,	that although he never saw Andy's lips
Gendreau Decl., $\P\P$ 10, 11	Deposition of Daniel Karschamroon,	moving, he heard some audible things
	pp. 261: 12-18, 264: 17-20, 284: 1-25,	coming out of his mouth. Zimmerman
	285: 1-6, 330: 11-15; Declaration of	also testified that he could see subtle
	Daniel Karschamroon, pp. 384: 18,	movement going on between the
	385: 1-5; Exhibit C, Depostion of	officers and Andy and that there could
	Richard Gendreau, pp. 174: 14-17;	have been a "whole 'nother [sic] set of
	176: 1-25, 177: 1-10, 182: 2-23, 187:	scenarios going on" that he did not see.
	1-8, 220: 1-24, 225: 17-24, 266: 1-10.	Karschamroon Depo., 348:9-15,
		355:16-19, Zimmerman Depo., 217:3-
		9, 222:11-223:13, 276:22-25
12. In a casual manner, Officer	12. Disputed: Officer Karschamroon	12. Plaintiffs do not dispute
Gendreau said words to the effect of,	testified the only thing he heard	Defendants' UMF that the officers

"Hey, dude, just calm down," and advised Andy to relax, put his hands behind his back, and that "we're not here to hurt you." Officer Karschamroon was reminding Andy to relax as well, but he was also shaking Andy's still clenched hands to let him know he still needed to be handcuffed. 12. Karschamroon Decl., ¶¶ 19, 20; Gendreau Decl., ¶¶ 12, 13

Gendreau say was "Hey, dude, calm down." Gendreau never ackowledged he said "dude calm down".

Karschamrron testified Gendreau never told Andy to put his hands behind his back and the only shaking he saw from Andy was Karschamroon shaking

Andy to let him know he was there.

Karschamroon testified he never said anything to Andy about being handcuffed.

Supporting Evidence: Exhibit B, Deposition of Daniel Karschamroon, pp. 282,345: 1-18,268: 19-23,269: 1-4; 419, Exhibit B, Deposition of Daniel Karschamroon, pp. 328: 1-7,330: 11-15/17-25,337: 10-16,340:8-9,341: 7-16.

attempted to relax and calm Andy while attempting to secure him, but rather dispute the exact words spoken. This does not create a genuine issue of material fact precluding summary judgment. Further, it is immaterial that Officer Karschamroon may not have said anything to Andy about being handcuffed since the act of attempting to handcuff him established the officer's intention. Officer Karschamroon's deposition testimony that Andy was not allowing his arms to be pulled apart and was providing tension to pull his arms together demonstrates resistance to that intention.

Karschamroon Depo., 321:22-322:22, 280:12-23, 362:12-17, 366:14-19

- officers' orders, and concern grew that the dangling handcuff could be used as a weapon if Andy decided to swing his arm. Both officers then attempted to pry Andy's arms down but could not overcome his flexed/locked position.

 A pain compliance technique performed by Officer Gendreau did nothing.
- 13. Karschamroon Decl., $\P\P$ 21, 22; Gendreau Decl., $\P\P$ 12, 14-16
- 13. **Disputed:** Gendreau said he did not believe Andy understood anything he said so how can he claim Andy ignored an order? Further, Karschamroon testified that neither "relax" or "dude calm down" were lawful orders. Both Karshamroon and Zimmerman said Gendreau never struggled with Andy except to taser him. Karschamroon testified repeatedly he never saw Gendreau touch Andy and did not struggle either alone or with Gendreau to get Andy's arm behind his back. Karschamroon testified he always hada
- hold of the loose handcuff so it could not be dangling and used as a weapon.

 Again, given the many new statements which are completely inconsitent with statements made to Internal Affairs and
- 13. Plaintiffs do not dispute any material fact precluding summary judgment and mischaracterize testimony. Officer Karschamroon did not testify that "relax" and "calm down" were not lawful orders. Although he did testify he had not received training that such commands were lawful orders, he stated that the commands given were appropriate given the goal of relaxing Andy. Officer Karschamroon also stated in his deposition that Andy was "actively resisting" by not allowing his arms to be pulled apart and providing tension to pull his arms together, and that he "thought it might turn violent." Nothing in Plaintiffs' cited testimony disputes that Andy continued to resist after Gendreau arrived. Further, Mark

during Deposition testimony puts the credibilty of Karschamroon and Gendreau is great doubt and their Declarations should be viewed with extreme caution.

Supporting Evidence: Exhibit B,
Deposition of Daniel Karschamroon,
pp. 273: 8-11,274,292: 17-23,293: 1,
331: 16-25,332: 18-21,333: 7-11;
Karschamroon GGPD Internal Affairs
Interview, pp. 7-8.; Exhibit A,
Deposition of Mark Zimmerman, pp.
79:11-20, 80:10-16, 81:4-5, 83:18-25,
85:1-10,87:3-7/16-23, 97:5-6, 100:125, 102:4-9/20-24, 150:20-25, 151:911, 197:20-25,198: 1-5, 209:23-25,
222:17 -25, 224: 6-12, 276: 10-20,
277:1-4, 278:18-21.

Zimmerman testified that Officer Gendreau did assist Officer Karschamroon by putting "his hands on Andy's hands or on the other officer's hands or in that vicinity" for "about 20 seconds" in what appeared to him as an effort to "keep more control" of Andy. Nothing in Zimmerman's testimony disputes the officers' account of Andy's resistance other than his own speculation. Zimmerman testified that he could see subtle movement going on between the officers and Andy and that there could have been a "whole 'nother [sic] set of scenarios going on" that he did not see. He could not hear what was being said, and although his eyesight is admittedly impaired, he never wears his prescription contact lens. Zimmerman observed the

incident from a distance of
approximately 40-50 feet could not tell
what small, detailed movements were
occurring. He does not know whether
the officers tried to move Andy's hands
from the top of his head, and admits
that many things could have been said
or done which he could not observe or
hear. While Zimmerman testified that
Andy's hands were on his head at all
times, he cannot say whether there was
any kind of struggle.
Karschamroon Depo., 321:22-322:22,
280:12-23, 283:20-284:20, 362:12-17,
366:14-19, Zimmerman Depo., 22:3-7,
82:11-18, 92:19-25, 93:16-19, 96:2-10,
100:7-20, 162:11-19, 187:3-11,
200:11-24, 201:6-12, 209:7-22, 217:3-
9, 222:11-223:13, 276:22-25, 287:25-
288:12.

- 14. Officer Gendreau thought that if a fight ensued, it was going to be a bad one given the strength that Andy had exhibited when resisting both officers attempt to lower his arms. Officer Karschamroon was similarly concerned about officer safety.
- 14. Karschamroon Decl., ¶ 21; Gendreau Decl., ¶ 19
- 14. **Disputed:** Karschamroon and Zimmerman both testified Gendreau never struggled to force Andy's hands behind back. Karschamroon said Gendreau never touched Andy. Karschamroon testified when he shook Andy's hands they moved so the extraordinary strength Gendreau said Andy had is disputed by Karschamroon.

Supporting Evidence: Exhibit B,
Deposition of Daniel Karschamroon,
pp. 273: 8-11,274,292: 17-23,293: 1,
33 1: 16-25, 332: 18-21, 333: 7-11;
Karschamroon GGPD Internal Affairs
Interview, pp. 7-8.; Exhibit A,
Deposition of Mark Zimmennan, pp.
79:11-20,80: 10-16,81: 4-5, 83: 1825,85:1-10,87: 3-7116-23,97: 5-6, 100:
1-25, 102: 4-9/20-24, 150: 20-25, 151:

14. Plaintiffs' evidence does not dispute any material fact. Plaintiffs ignore Officer Karschamroon's testimony that when a handcuff was placed on Andy's right wrist, Andy "tensed" and Officer Karschamroon "could feel his fingers closing, kind of curling up from that interlocked position" and "close up as if the fingers were curling." Officer Karschamroon also stated in his deposition that Andy was "actively resisting" by not allowing his arms to be pulled apart and providing tension to pull his arms together, and that he "thought it might turn violent." Nothing in Plaintiffs' cited testimony disputes that Andy continued to resist after Gendreau arrived. Further, Mark Zimmerman testified that Officer Gendreau did

	9-11, 197:20-25,198: 1-5,209:23-25,	assist Officer Karschamroon by putting
	222:17-25,224: 6-12, 276: 10-20,277:	"his hands on Andy's hands or on the
	1-4, 278: 18-21.	other officer's hands or in that vicinity"
		for "about 20 seconds" in what
		appeared to him as an effort to "keep
		more control" of Andy. Nothing in
		Zimmerman's testimony disputes the
		officers' account of Andy's resistance
		other than his own speculation.
		Karschamroon Depo., 321:22-322:22,
		280:12-23, 362:12-17, 366:14-19,
		Zimmerman Depo., 22:3-7, 82:11-18,
		92:19-25, 93:16-19, 96:2-10, 100:7-20,
		162:11-19, 187:3-11, 200:11-24,
		201:6-12, 209:7-22, 217:3-9, 222:11-
		223:13, 276:22-25, 287:25-288:12.
15. As Andy continued to resist officer	15. Disputed: Karschamroon testified	15. Plaintiffs do not dispute any
commands by remaining rigid and non-	after he told Andy to interlock his	material fact precluding summary
responsive, Officer Gendreau decided to	fingers Andy was only told to relax or	judgment and mischaracterize
take out his Taser. Andy was informed	"dude calm down" which	testimony. Officer Karschamroon
several times that if he did not comply,	Karschamroon testified were not lawful	testified that Officer Gendreau did warn

he would be tased. Andy continued to resist, so Officer Gendreau deployed his taser once in Andy's thigh for a cycle of five seconds.

15. Karschamroon Decl., $\P\P$ 22-25; Gendreau Decl., $\P\P$ 20-23 orders. Gendreau testified he did not believe Andy understood anything he said so it would be difficult for him to "resist" non lawful "commands".

Karschamroon testified Gendreau told him "Danny I'm just going to Tase him" and Karschamroon testified Gendreau never told Andy he was going to be tasered. Zimmerman said Gendreau stepped to Andy's side and immediatly tasered him.

Deposition of Mark Zimmerman, pp. 108: 1-11118-24, 110: 1-13122-25,111: 10-17/18-22,112: 25, 121: 6-11/15-24,123: 15-25, 240: 21-25, 242: 13-25, 243: 11-16,244: 12-15,246: 7-19; Exhibit B, Deposition of Daniel Karschamroon, pp. 397: 7-8; Exhibit D, Deposition of Richard Fukumoto, M.D.,

Supporting Evidence: Exhibit A,

Andy that he would be tased if he did not calm down, and Zimmerman testified that Officer Gendreau had his hands on top of Andy's hands for about 20 seconds before stepping to the side to taser him.

Karschamroon Depo., 331:6-12, Zimmerman Depo., 208:8-209:17

	pp.90: 13-16,258: 16-19,259: 2-23, 260:	
	1-10,261: 13-15,264: 21-24, 266: 13-22,	
	268:6-22,280: 19-25,281:10-25, 282: 7-	
	15, 283: 4-16121-23; Exhibit E,	
	Deposition of Bua Thi Phan, pp. 243.	
	1:16-18; 256.1: 2-5.	
16. Prior to deploying the taser, Officer	16. Disputed: GGPD General Order	16. Plaintiffs do not dispute any
Gendreau also attempted to activate his	5.31 states the IVS Unit must be	material fact precluding summary
audio recording system and the one in	activated when a detention was going	judgment. The General Orders are
his police unit, although he was too far	to occur. Gendreau testified he saw	simply "guidelines," and the purpose of
away for remote avtivation. Based on	Karschamroon detaining Andy when he	the In-Car Video System (IVS) is to
the nature of the call and rapidly	arrived yet failed to activate his IVS	provide an accurate, unbiased
evolving events, activating a recorder or	Unit; Karschamroon testified he	audiovisual record of enforcement
his in-unit video during this incident	thought IVS Unit activation was	related and non-criminal incidents that
was "not at the forefront" of Officer	completely within his discretion. No	will enhance criminal prosecutions and
Karschamroon's thoughts.	where in the GGPD General Orders	limit civil liabilities. The policy is non-
16. Karschamroon Decl., ¶ 41;	does it indicate "rapidly evolving	punitive in nature, and no disciplinary
Gendreau Decl., ¶ 20	events warrant ignoring orders. The	action for violations of this policy will
	fact Gendreau claims to have attempted	be proposed unless the employee
	to activate his IVS Unit shows he had	refuses either actively or passively, as
	time and should have called for a	demonstrated by repeated instances of

	supervisor and medics before tasering	his/her failure. Summoning Fire
	Andy as required by GGPD General	Department Paramedics before the use
	Order 2.25. Further, given the major	of a Taser is only recommended, if
	credibility issues of all involved	practical, under the circumstances.
	officers Plaintiffs do not believe the	General Order 2.24, 5.31, General
	Court should not accept the IVS	Order, "Statement by the Chief of
	recordings were destroyed. GGPD	Police"
	General Order 5.31 states if IVS fails to	
	activate a work order must be	
	completed and Gendreau never did the	
	required paperwork.	
	Supporting Evidence: Exhibit C,	
	Deposition of Richard Gendreau, pp.	
	97-98, 109: 20-23; Exhibit H, GGPD	
	General Order 2.24,5.31.	
17. Officer Gendreau was trained that	17. Disputed: Gendreau testified he	17. Plaintiff's evidence does not
one of the best ways to get a subject on	believed that Andy was under the	constitute a genuine issue of material
the ground is to tase them in the leg.	influence of a Central Nervous System	fact precluding summary judgment; it is
His goal was to take Andy into custody	stimulant before he tasered Andy and	immaterial in light of Andy's actual
without any further risk of injury to	knew and had been trained that tasering	resistance while being detained, and the
Andy, Officer Karschamroon or	Andy could cause his immediate death.	totality of the circumstances

himself.

17. Gendreau Decl., ¶ 22

Given theses facts it is difficult to believe Gendreau did not believe to injure Andy. Further, GGPD General Orders state a medic and supervisor should be called prior to tasering a subject. Gendreau testified he tried to activate his IVS and Lux testified it would have take 1-3 seconds to call for a medic and supervisor. Gendreau said Andy was not resisting, being aggressive or looking like would flee when he wass tasered so there was no rush to taser Andy. Andy was therefore a non comabative subject per GGPD General Order 2.6 and Lux testified he trained his students including Gendreau not taser such subjects. Karschamroon testified he saw no reason to take out any weapons against Andy and had no idea why

confronting the officers during that detention. Officer Karschamroon testified that he did not feel it was necessary to take out any weapon only up to the point of placing the first handcuff on Andy's wrist. Officer Gendreau testified that Andy's conduct and appearance was indicative of someone who potentially is going to throw a punch. Plaintiffs' misrepresent the testimony of Benedict Lux, which was based on incomplete hypothetical questioning and not on facts relevant to this case.

Karschamroon Depo., 251:21-252:6, Gendreau Depo., 178:5-16.

Gendreau was tasering Andy. Lux testified Karshamroon as the first officer on scene should have determined why Gendreau was going to taser Andy. Supporting Evidence: Exhibit B, Deposition of Daniel Karschamroon, pp. 251: 17-25,252: 1-118,355: 21-24,357: 3-18, 360: 1-6; Exhibit C, Deposition of Richard Gendreau, pp. 96: 1-16, 174: 14-17; 176: 1-25, 177: 1-10, 182: 2-23, 187: 1-8,220: 1-24,225: 17-24,266: 1-10, 327: 17-22,328: 1-14/20-25,329: 1-18; Exhibit F, Deposition of Benedict Lux,pp. 176: 15-22,177:7-20,178: 5-14, 179: 5-12, 204: 1-25,205: 1-15,206:9-22, 209: 1-25, 210: 8-18, 211: 9-11, 212: 13-18, 244: 14-25, 247: 21-25, 252: 21-25, pp. 253: 1-3/5-12,254,255: 1-5/12-15;

	<u> </u>	
	Exhibit H, GGPD General Order	
	2.24,2.6; Exhibit J, Karschamroon	
	GGPD Internal Affairs Interview, pp.	
	15.	
18. Once Andy was tased, he began to	18. Disputed: Zimmerman testified	18. Plaintiff's evidence does not
fall backward toward Officer	Andy fell hard to the ground after the	constitute a genuine issue of material
Karschamroon, who caught him and	tasering like a "sack of potatoes" and	fact precluding summary judgment; it is
laid him forward onto the ground.	saw nothing consistent with Andy	immaterial in light of Andy's actual
Andy also released his grip, and once	being gently placed on the ground.	resistance while being detained, and the
the taser cycle stopped, the officers	Zimmerman testified Andy was a fat	totality of the circumstances
were able to bring his left arm behind	guy and the officers could not have-	confronting the officers during that
his back and apply the other handcuff to	placed him gently down if they wanted.	detention. Zimmerman has had no
secure his arms.	Zimmerman testified when Andy hit	medical training. Although his eyesight
18. Karschamroon Decl., ¶ 26;	the ground was dead and never moved	is admittedly impaired, he never wears
Gendreau Decl., $\P\P$ 24, 25	again on his own.	his prescription contact lens.
	Supporting Evidence: Exhibit A,	Zimmerman observed the incident from
	Deposition of Mark Zimmerman, pp.	a distance of approximately 40-50 feet
	108: 1-11118-24, 110: 1-13,240: 21-25,	and could not tell what small, detailed
	242: 13-25,243: 11-16.	movements were occurring.
		Zimmerman testified that it was
		possible that Andy was breathing after

		being tased and that he just did not
		observe it, and that his belief that Andy
		was dead is not based on any actual
		evidence.
		Zimmerman Depo. pp. 22:3-7, 162:11-
		19, 180:20-21; 201:6-12, 293:23-
		294:12
19. At approximately 11:38 a.m.,	19. Disputed: GG Fire Department	19. Plaintiff's evidence does not
Officer Gendreau advised over his	paramedics were not dispached until	constitute a genuine issue of material
police radio that the situation was	11:39:38. Per Lux and GGPD General	fact precluding summary judgment; it
stable, but that Andy had been tased and	Order 2.24 states medics should be	remains undisputed that GG Fire
he requested Garden Grove Fire	called before any tasering and a	Department paramedics were promptly
Department to respond to examine	supervisor must be called before a	dispatched after Andy was tased.
Andy per their protocol when a subject	tasering. Sergeant Wagner was not	General Orders are guidelines and not
is tased. At approximately 11:39 a.m.,	requested until 11:46.	an independent mechanism to pursue
Garden Grove Fire Department was	Supporting Evidence: Exhibit D,	civil liability.
dispatched to the incident scene in	tased. Deposition of Richard	General Orders, "Statement by the
reference to Andy being tased.	Fukumoto, M.D., pp.90: 13-16, 282: 7-	Police Chief"
19. Karschamroon Decl., ¶ 27;	15, 283: 4-16/21-23; Exhibit F,	
Gendreau Decl., ¶ 26; Exhibit 3	Deposition of Benedict Lux, pp. 249:	
Dispatch CAD	15-25,250:9-10,260: 13-25, 262: 15-25,	

	263: 1-3; Exhibit H, GGPD General	
	Order 2.24; Exhibit K, Sergeant	
	Wagner's report.	
20. As he was handcuffed and on the	20. Disputed: Zimmerman testified	20. Plaintiff's evidence does not
ground, Andy looked in various	Andy fell hard to the ground after the	constitute a genuine issue of material
directions. Officer Gendreau continued	tasering like a "sack of potatoes" and	fact precluding summary judgment; it is
to instruct him to relax, and informed	saw nothing consistent with Andy	immaterial in light of the undisputed
him they were in the process of getting	being gently placed on the ground.	fact that GG Fire Department
him medical attention. When asked if	Zimmerman testified Andy was a fat	Paramedics were promptly summoned.
he was doing okay, Andy remained	guy and the officers could not have	In any event, Zimmerman has had no
unresponsive but continued to look	placed him gently down if they wanted.	medical training, and although his
around.	Zimmerman testified when Andy hit	eyesight is admittedly impaired, he
20. Karschamroon Decl., ¶ 30;	the ground was dead and never moved	never wears his prescription contact
Gendreau Decl., ¶ 27	again on his own. Karschamroon	lens. Zimmerman observed the
	testifed Gendreau opened up Andy's	incident from a distance of
	eyes and Karschamroon could not tell	approximately 40-50 feet and could not
	if Andy was breathing. Zimmerman	tell what small, detailed movements
	said he saw Gendreau slapping Andy's	were occurring. Zimmerman testified
	face and saying "to stop faking", Bua	that it was possible that Andy was
	Phan also testified Andy died	breathing after being tased and that he
	immediately after the tasering. Dr.	just did not observe it, and that his

	Fukumoto testified the evidence is	belief that Andy was dead is not based
	consistent with Andy being dead	on any actual evidence. Dr. Fukumoto
	immediately after he saw tasered.	testified that he has no way of knowing
	Supporting Evidence: Exhibit A,	when Andy died and that he relies on
	Deposition of Mark Ztinmerman, pp.	the physician's death pronouncement as
	108: 1-11/18-24, 110: 1-13/22-25, 111:	to the time of death.
	10-17/18-22, 112: 25, 121: 6-11/5-24,	Zimmerman Depo., 22:3-7, 162:11-19,
	123: 15-25, 240: 21-25, 242: 13-25,	180:20-21; 201:6-12, 293:23-294:12;
	243: 11-16, 244: 12-15, 246:7-19;	Fukumoto Depo., 187:19-188:5,
	Exhibit B, Deposition of Daniel	258:7-259:25
	Karschamroon, pp. 397: 7-8; Exhibit D,	
	Deposition of Richard Fukumoto,	
	M.D., pp. 90: 13-16, 258: 16-19, 259:	
	2-23, 260: 1-10, 261: 13-15, 264: 21-	
	24, 266: 13-22, 268: 6-22, 280: 19-25,	
	281: 10-25, 282: 7-15, 283: 4-16/21-	
	23; Exhibit E, Deposition of Bua Thi	
	Phan, pp. 243.1: 16-18; 256.1: 2-5.	
21. After the tasing, a third officer	21. Disputed: Zimmerman testified	21. Plaintiff's evidence does not
arrived on scene, Officer Amir El-Farra.	Andy fell hard to the ground after the	constitute a genuine issue of material
The officers decided to roll Andy over	tasering like a "sack of potatoes" and	fact precluding summary judgment; it is

on his back to observe him from the front. His eyes were closed, but a check by Officer Gendreau found they were dilated. Because of that and Andy's labored breathing, the officers decided to sit him up against Officer El-Farra's leg, thinking it might help with his breathing and help snap him out of the trance he appeared to be in.

21. Karschamroon Decl., $\P\P$ 29-34; Gendreau Decl., $\P\P$ 31-32; El-Farra Decl., $\P\P$ 6-8

saw nothing consistent with Andy being gently placed on the ground. Zimmeman testified Andy was a fat guy and the officers could not have placed him gently down if they wanted. Zimmerman testified when Andy hit the ground was dead and never moved again on his own. Zimmerman testified when the police rolled Andy against an officers legs he could clearly see Andy chest and stomach and he was clearly not breathing. Karschamroon testifed Gendreau opened up Andy's eyes and Karschamroon could not tell if Andy was breathing. Zimmerman said he saw Gendreau slapping Andy's face and saying "to stop faking". Bua Phan also testified Andy died immediately after the tasering.

immaterial in light of the undisputed fact that GG Fire Department Paramedics were promptly summoned. In any event, Zimmerman has had no medical training, and although his eyesight is admittedly impaired, he never wears his prescription contact lens. Zimmerman observed the incident from a distance of approximately 40-50 feet and could not tell what small, detailed movements were occurring. Zimmerman testified that it was possible that Andy was breathing after being tased and that he just did not observe it, and that his belief that Andy was dead is not based on any actual evidence. Dr. Fukumoto testified that he has no way of knowing when Andy died and that he relies on the physician's death pronouncement as

Dr. Fukumoto testified the evidence is

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	consistent with Andy being dead	to the time of death.
	immediately after he saw tasered.	Zimmerman Depo., 22:3-7, 162:11-19,
	Supporting Evidence: Exhibit A,	180:20-21; 201:6-12, 293:23-294:12;
	Deposition of Mark Zimmerman, pp.	Fukumoto Depo., 187:19-188:5,
	108: 1-11/8-24, 110: 1-13/22-25, 111:	258:7-259:25
	10-17/18-22, 112: 25, 121: 6-11/15-24,	
	123: 15-25, 240: 21-25, 242: 13-25,	
	243: 11-16,244: 12-15, 246: 7-19;	
	Exhibit B, Deposition of Daniel	
	Karschamroon, pp. 397: 7-8; Exhibit D,	
	Deposition of Richard Fukumoto,	
	M.D., pp. 90: 13-16,258: 16-19,259:2-	
	23, 260: 1-10, 261: 13-15, 264: 21-24,	
	266: 13-22,268:6-22, 280: 19-25, 281:	
	10-25, 282: 7-15, 283: 4-16/21-23;	
	Exhibit E, Deposition of Bua Thi Phan,	
	pp. 243.1: 16-18; 256.1: 2-5.	
22. Given Andy's dilated pupils in	22. Disputed: Gendreau testified he	22. Plaintiff's evidence does not
bright sunlight and his rapid pulse,	believed that Andy was under the	constitute a genuine issue of material
Officer Gendreau did consider that he	influence of a Central Nervous System	fact precluding summary judgment; it is
may be under the influence of a	stimulant before he tasered Andy and	immaterial in light of Andy's actual

controlled substance, but he never had the opportunity to do a full evaluation.

22. Gendreau Decl., ¶ 37

knew and had been trained that tasering Andy could cause his immediate death. Further, GGPD General Orders state a medic and supervisor should be called prior to tasering a subject. Gendreau testified he tried to activate his IVS and Lux testified it would have take 1-3 seconds to call for a medic and supervisor. Gendreau said Andy was not resisting, being aggressive or looking like would flee when he wass tasered so there was no rush to taser Andy. Andy was therefore a non comabative subject per GGPD General Order 2.6 and Lux testified he trained his students including Gendreau not taser such subjects. Karschamroon testified he saw no reason to take out any weapons against

resistance while being detained, and the totality of the circumstances confronting the officers during that detention. Officer Karschamroon testified that he did not feel it was necessary to take out any weapon only up to the point of placing the first handcuff on Andy's wrist. Officer Gendreau testified that Andy's conduct and appearance was indicative of someone who potentially is going to throw a punch. Plaintiffs' misrepresent the testimony of Benedict Lux, which was based on incomplete hypothetical questioning and not on facts relevant to this case.

Karschamroon Depo., 251:21-252:6, Gendreau Depo., 178:5-16.

Andy and had no idea why Gendreau

was tasering Andy. Lux testified Karshamroon as the first officer on scene should have determined why Gendreau was going to taser Andy. Gendreau clearly had time to whatever exams and calls necessary before he tasered Andy. Supporting Evidence: Exhibit B, Deposition of Daniel Karschamroon, pp. 251: 17-25, 252: 1-118, 355: 21-24, 357: 3-18, 360: 1-6; Exhibit C, Deposition of Richard Gendreau, pp. 96: 1-16, 174: 14-17; 176: 1-25, 177: 1-10, 182: 2-23, 187: 1-8, 220: 1-24, 225: 17-24, 266: 1-10, 327: 17-22, 328: 1-14/20-25, 329: 1-18; Exhibit F, Deposition of Benedict Lux, pp. 176: 15-22, 177: 7-20, 178: 5-14, 179: 5-12, 204: 1-25, 205: 1-15, 206: 9-22, 209: 1-25, 210: 8-18, 211: 9-11, 212: 13-18,

	244: 14-25, 247: 21-25, 252: 21-25, pp.	
	253: 1-3/5-12, 254, 255: 1-5/12-15;	
	Exhibit H, GGPD General Order 2.24,	
	2.6; Exhibit J, Karschamroon GGPD	
	Internal Affairs Interview, pp. 15.	
23. As Andy was seated upright and	23. Disputed: Zimmerman testified	23. Plaintiff's evidence does not
leaning against Officer El-Farra's leg,	Andy fell hard to the ground after the	constitute a genuine issue of material
his breathing was observed to be	tasering like a "sack of potatoes" and	fact precluding summary judgment; it is
labored but no officer believed the	saw nothing consistent with Andy	immaterial in light of the undisputed
situation to be critical. Officer	being gently placed on the ground.	fact that GG Fire Department
Karschamroon saw nothing to suggest a	Zimmerman testified Andy was a fat	Paramedics were promptly summoned.
life-threatening situation, Officer	guy and the officers could not have	In any event, Zimmerman has had no
Gendreau "felt comfortable" upon	placed him gently down if they wanted.	medical training, and although his
hearing the approach of the medics, and	Zimmerman testified when Andy hit	eyesight is admittedly impaired, he
Officer El-Farra could see Andy's chest	the ground was dead and never moved	never wears his prescription contact
rising and falling.	again on his own. Zimmerman testified	lens. Zimmerman observed the
23. Karschamroon Decl., ¶ 35;	when the police rolled Andy against an	incident from a distance of
Gendreau Decl., ¶¶ 33-34; El-Farra	officers legs he could clearly see Andy	approximately 40-50 feet and could not
Decl., ¶¶10	chest and stomach and he was clearly	tell what small, detailed movements
	not breathing. Karschamroon testifed	were occurring. Zimmerman testified
	Gendreau opened up Andy's eyes and	that it was possible that Andy was

Karschamroon could not tell if Andy was breathing. Zimmerman said he saw Gendreau slapping Andy's face and saying "to stop faking". Bua Phan also testified Andy died immediately after the tasering.

Dr. Fukumoto testified the evidence is consistent with Andy being dead immediately after he saw tasered.

Dr. Fukumoto also testified that if officers did see labored or heavy breathing they should have known Andy was in cardiad distress and taken off the handcuffs at a minimum.

Supporting Evidence: Exhibit A,

Deposition of Mark Zimmerman, pp.

108: 1-11/18-24, 110: 1-13/22-25, 111:

10-17/18-22, 112: 25, 121: 6-11/15-24,

123: 15-25, 240: 21-25, 242: 13-25,

243: 11-16, 244: 12-15, 246: 7-19;

breathing after being tased and that he just did not observe it, and that his belief that Andy was dead is not based on any actual evidence. Dr. Fukumoto testified that he has no way of knowing when Andy died and that he relies on the physician's death pronouncement as to the time of death.

Zimmerman Depo., 22:3-7, 162:11-19, 180:20-21; 201:6-12, 293:23-294:12; Fukumoto Depo., 187:19-188:5, 258:7-259:25

	Exhibit B, Deposition of Daniel	
	Karschamroon, pp. 397: 7-8; Exhibit 0,	
	Deposition of Richard Fukumoto,	
	M.D., pp. 90: 13-16, 258: 16-19, 259:	
	2-23, 260: 1-10, 261: 13-15, 264: 21-	
	24, 266: 13-22, 268:6-22, 280: 19-25,	
	281: 10-25, 282: 7-15, 283: 4-16/21-	
	23; Exhibit E, Deposition of Bua Thi	
	Phan, pp. 243.1: 16-18; 256.1: 2-5.	
24. Officer Gendreau asked Officer	24. Disputed: Zimmerman testified all	24. Plaintiff's evidence does not
El-Farra to stay with Andy as he and	police officers arrived outside until the	constitute a genuine issue of material
Officer Karschamroon ascertained the	paramedics arrived looking	fact precluding summary judgment; it is
welfare or condition of the calling party	increasingly more concerned because	immaterial in light of the undisputed
or family considering the nature of the	Andy was not moving. Per Exhibit 3	fact that GG Fire Department
call and the need to determine if anyone	of Defedants Motion EI-Farra was on	Paramedics were promptly summoned.
had been injured or attacked by Andy.	scene at 11:38 and Paramedics did not	In any event, Zimmerman "thinks"
Officer El-Farra estimates that he was	arrive until 11:44 so EI-Farra was on	Officers Karschamroon and Gendreau
in front of the residence, with Andy, for	scene for minutes prior to the	remained with Andy until the
approximately 15 to 20 seconds	paramedics arrival.	paramedics arrived but concedes he lost
thereafter prior to medics arriving.	Supporting Evidence: Exhibit A,	track of them.
24. Karschamroon Decl., ¶¶ 35-36;	Deposition of Mark Zimmerman, pp.	

Gendreau Decl., ¶ 33-34; El-Farra	123:15-25, 246: 7-19, 251: 4, 264: 18-	Zimmerman Depo., 264:18-23, 267:12-
Decl., ¶ 11-12	25 ,265: 5-14/18-25,267: 6-8.; Defense	14, 307:21-25
	Exhibit 3, Dispatch CAD.	
25. Officers Gendreau and	25. Disputed: Zimmerman testified all	25. Plaintiffs' evidence does not
Karschamroon then contacted Andy's	police officers arrived outside until the	constitute a genuine issue of material
family inside the residence, but it	paramedics arrived looking	fact precluding summary judgment; it is
appeared the only individual who	increasingly more concerned because	immaterial in light of the undisputed
sustained an injury was Plaintiff Bua	Andy was not moving. Per Exhibit 3 of	fact that GG Fire Department
Thi Phan, who had sustained a scraped	Defedants Motion EI-Farra was on scene	Paramedics were promptly summoned.
elbow. Her injury was measured and	at 11:38 and Paramedics did not arrive	In any event, Zimmerman "thinks"
photographed.	until 11:44 so EI-Farra was on scene for	Officers Karschamroon and Gendreau
25. Karschamroon Decl., $\P 937-38$;	minutes prior to the paramedics arrival.	remained with Andy until the
Gendreau Decl., ¶ 35; Exhibit 4,	There has been no testimony by	paramedics arrived but concedes he lost
Photograph of Injury; Exhibit 5,	Karschamroon or Gendreau that they	track of them. Further, Plaintiffs do not
Photograph of Screen	ever personally observed any injury nor	deny that Bua Thi Phan was injured in a
	photographed any injury to Bua Phan	struggle with Andy.
	so there is a complete lack of	Zimmerman Depo., 264:18-23, 267:12-
	foundation for this "new" testimony.	14, 307:21-25
	Again, another example of recreating	
	history by Karschamroon and	
	Gendreau and another reason to	

	disbelieve both of their Declarations.	
	Further, the attached photographs were	
	submitted late and beyond the Motion	
	Cut-Off time.	
	Supporting Evidence: Exhibit A,	
	Deposition of Mark Zimmerman, pp.	
	123: 15-25, 246: 7-19, 251: 4, 264: 18-	
	25, 265: 5-14/18-25, 267: 6-8.; Defense	
	Exhibit 3, Dispatch CAD.	
26. An approaching medic was	26. Disputed: Zimmerman testified	26. Plaintiff's evidence does not
informed by Officer El-Farra about the	Andy fell hard to the ground after the	constitute a genuine issue of material
tasing and Andy's labored breathing.	tasering like a "sack of potatoes" and	fact precluding summary judgment; it is
The medic checked for Andy's pulse	saw, nothing consistent with Andy	immaterial in light of the undisputed
and informed Officer El-Farra that he	being gently placed on the ground.	fact that GG Fire Department
needed to start CPR. This took Officer	Zimmeman testified Andy was a fat	Paramedics were promptly summoned.
El-Farra completely by surprise. When	guy and the officers could not have	In any event, Zimmerman has had no
he had looked away from Andy to	placed him gently down if they wanted.	medical training, and although his
speak to the medic, Andy had been	Zimmerman testified when Andy hit	eyesight is admittedly impaired, he
breathing. At no time did Officer El-	the ground was dead and never moved	never wears his prescription contact
Farra hear or see Andy stop breathing,	again on his own. Zimmerman testified	lens. Zimmerman observed the
or notice any other physical difficulties.	when the police rolled Andy against an	incident from a distance of

	officers legs he could clearly see Andy	approximately 40-50 feet and could not
26. El-Farra Decl., ¶ 13-17	chest and stomach and he was clearly	tell what small, detailed movements
	not breathing. Karschamroon testifed	were occurring. Zimmerman testified
	Gendreau opened up Andy's eyes and	that it was possible that Andy was
	Karschamroon could not tell if Andy	breathing after being tased and that he
	was breathing. Zimmerman said he saw	just did not observe it, and that his
	Gendreau slapping Andy's face and	belief that Andy was dead is not based
	saying "to stop faking". Bua Phan also	on any actual evidence. Dr. Fukumoto
	testified Andy died immediately after	testified that he has no way of knowing
	the tasering.	when Andy died and that he relies on
	Dr. Fukumoto testified the evidence is	the physician's death pronouncement as
	consistent with Andy being dead	to the time of death.
	immediately after he saw tasered.	Zimmerman Depo., 22:3-7, 162:11-19,
	Dr. Fukumoto also testified that if	180:20-21; 201:6-12, 293:23-294:12;
	officers did see labored or heavy	Fukumoto Depo., 187:19-188:5,
	breathing they should have known	258:7-259:25
	Andy was in cardiad distress and taken	
	off the handcuffs at a minimum.	

Supporting Evidence: Exhibit A,

Deposition of Mark Zimmerman,

	pp.108: 1-11/18-24, 110: 1-13/22-25,	
	111: 10- 17/18-22, 112: 25, 121: 6-	
	11/15-24, 123: 15-25, 240: 21-25, 242:	
	13-25, 243: 11-16, 244: 12-15, 246: 7-	
	19; Exhibit B, Deposition of Daniel	
	Karschamroon, pp. 397: 7-8; Exhibit D,	
	Deposition of Richard Fukumoto,	
	M.D., pp. 90: 13-16, 258: 16-19, 259:	
	2-23, 260: 1-10, 261: 13-15, 264: 21-	
	24, 266: 13-22, 268:6-22, 280: 19-25,	
	281: 10-25, 282: 7-15, 283: 4-16/21-	
	23; Exhibit E, Deposition of Bua Thi	
	Phan, pp. 243.1: 16-18; 256.1: 2-5.	
27. After checking the house, the	27. Disputed: Zimmerman testified all	27. Plaintiff's evidence does not
Officers Gendreau and Karschamroon	police officers arrived outside until the	constitute a genuine issue of material
started toward the front door. They	paramedics arrived looking	fact precluding summary judgment; it is
could then see the paramedics	increasingly more concerned because	immaterial in light of the undisputed
performing CPR on Andy. This was a	Andy was not moving. Zimmerman	fact that GG Fire Department
"shock" and "surprise" to both officers.	testified Andy fell hard to the ground	Paramedics were promptly summoned.
27. Karschamroon Decl., ¶¶39;	after the tasering like a "sack of	In any event, Zimmerman has had no
Gendreau Decl., ¶ 38	potatoes" and saw nothing consistent	medical training, and although his

with Andy being gently placed on the ground. Zimmeman testified Andy was a fat guy and the officers could not have placed him gently down if they wanted. Zimmerman testified when Andy hit the ground was dead and never moved again on his own. Zimmerman testified when the police rolled Andy against an officer's legs he could clearly see Andy chest and stomach and he was clearly not breathing. Karschamroon testifed Gendreau opened up Andy's eyes and Karschamroon could not tell if Andy was breathing. Zimmerman said he saw Gendreau slapping Andy's face and saying "to stop faking". Bua Phan also testified Andy died immediately after the tasering. Dr. Fukumoto testified the evidence is

eyesight is admittedly impaired, he never wears his prescription contact lens. Zimmerman observed the incident from a distance of approximately 40-50 feet and could not tell what small, detailed movements were occurring. Zimmerman testified that it was possible that Andy was breathing after being tased and that he just did not observe it, and that his belief that Andy was dead is not based on any actual evidence. Dr. Fukumoto testified that he has no way of knowing when Andy died and that he relies on the physician's death pronouncement as to the time of death. Zimmerman Depo., 22:3-7, 162:11-19, 180:20-21; 201:6-12, 293:23-294:12;

Fukumoto Depo., 187:19-188:5,

258:7-259:25

consistent with Andy being dead ' immediately after he saw tasered. Dr. Fukumoto also testified that if officers did see labored or heavy breathing they should have known Andy was in cardiad distress and taken off the handcuffs at a minimum. Supporting Evidence: Exhibit A, Deposition of Mark Zimmerman, pp. 108: 1-11118-24, 110: 1-13/22-25, 111:10-17/18-22,112: 25,121: 6-11/15-24,123: 15-25,240: 21-25,242: 13-25, 243: 11-16,244: 12-15,246: 7-19; Exhibit B, Deposition of Daniel Karschamroon, pp. 397: 7-8; Exhibit 0, Deposition of Richard Fukumoto, M.D., pp. 90: 13-16,258: 16-19,259: 2-23, 260: 1-10,261: 13-15,264: 21-24,266:13-22,268:6-22,280: 19-25,281: 10-25,282: 7-15,283: 4-16/21-23;

	Exhibit E, Deposition of Bua Thi Phan,	
	pp.243.1: 16-18; 256.1: 2-5.	
28. Although the paramedics	28. Disputed: Dr. Fukumoto testified	28. Plaintiff's evidence does not
rendered emergency care and	no drug played any role in Andy's	constitute a genuine issue of material
transported to the hospital, Andy Tran	death and none where at fatal levels.	fact precluding summary judgment; it is
did not survive. Toxicology results	He testified Andy died from being	immaterial in light of Andy's actual
revealed substantial levels of	tasered and the evidence was consistent	resistance while being detained, the
Diphenhydramine and	with Andy dying immediatly after	totality of the circumstances
Trihexylphenidyl in his system at the	being hit with the taser. Andy was in	confronting the officers during that
time of death.	full cardiac arrest when the paramedics	detention, and in light of the undisputed
Supporting Evidence: Exhibit 6,	arrived and his eyes were fixed and	fact that GG Fire Department
Toxicology Report	dilated. Dr.	Paramedics were promptly summoned.
	Fukumoto has been qualified as an	In any event, the Plaintiffs' do not
	expert in interpreting toxicology results	dispute the Defendants' UMF, but Dr.
	in Courts.	Fukumoto's opinion that the tasering
	Supporting Evidence: Exhibit D,	was a factor in Andy's death was
	Deposition of Richard Fukumoto,	because he already had a bad heart and
	M.D., pp. 63: 1-8, 66: 18-22, 67: 4-5,	liver. Dr. Fukumoto testified that he
	90: 13-16, 141: 5-25, 142: 6-7, 143: 2-	has no way of knowing when Andy
	3, 228: 13-25, 229: 20-25, 239: 10-	died and that he relies on the
	14/19-25, 240: 1-25,243: 1-25, 245:	physician's death pronouncement as to

	17-25, 260: 1-10, 283: 4-16/21-23,	the time of death.
	296: 1-7, 304: 1-3/16-18, 305: 8-25,	Fukumoto Depo., 187:19-188:5,
	306: 1-2/10-14, 307: 1-8/22-25, 308: 5-	206:23 - 207:11, 258:7-259:25
	7, 309: 1-5/18-22, 347: 1-4, 355: 2-9.	
29. The Coroner listed the cause of	29. Disputed: Dr. Fukumoto testified	29. Plaintiff's evidence does not
death as "Cardiac arrhythmia during	no drug played any role in Andy's	constitute a genuine issue of material
struggle with law enforcement due to	death and none where at fatal levels.	fact precluding summary judgment; it is
dilated hyertropic cardiomyopathy with	He testified Andy died from being	immaterial in light of Andy's actual
diphenhydramine and trihexylphenidl	tasered and the evidence was consistent	resistance while being detained, the
intoxication."	with Andy dying immediatly after	totality of the circumstances
29. Exhibit 7, Autopsy Report	being hit with the taser. Andy was in	confronting the officers during that
	full cardiac arrest when the paramedics	detention, and in light of the undisputed
	arrived and his eyes were fixed and	fact that GG Fire Department
	dilated. Dr.	Paramedics were promptly summoned.
	Fukumoto has been qualified as an	In any event, the Plaintiffs' do not
	expert in interpreting toxicology results	dispute the Defendants' UMF, but Dr.
	in Courts. Dr. Fukumoto testified he	Fukumoto opinion that the tasering was
	was provided an incorrect history	a factor in Andy's death was because he
	including being told Andy was	already had a bad heart and liver. Dr.
	breathing when paramedics arrived and	Fukumoto testified that he has no way
	was never told exactly what type of	of knowing when Andy died and that

struggle Andy was alleged to have been involved in with police. After being provided the true facts, including Dr. Karschamroon's deposition, Dr. Fukumoto concluded Andy died from the tasering. The Defense objected to Dr. Fukumoto reading the Internal Affair transcripts of Officer Gendreau and Karschamroon even though Dr. Fukumoto thought they could define the facts.

Supporting Evidence: Exhibit D, Deposition of Richard Fukumoto, M.D., pp. 63: 1-8, 66: 18-22, 67: 4-5, 90: 13-16, 141: 5-25, 142: 6-7, 143: 2-3, 228: 13-25, 229: 20-25, 239: 10-14/19-25, 240: 1-25, 243: 1-25, 245: 17-25, 260: 1-10, 283: 4-16/21-23, 296: 1-7, 304: 1-3-16-18, 305: 8-25,

he relies on the physician's death pronouncement as to the time of death.

Fukumoto Depo., 187:19-188:5, 206:23
- 207:11, 258:7-259:25

306: 1-2/10-14, 307: 1-8/22-25, 308: 5-

7, 309: 1-5/18-22, 347: 1-4, 355: 2-9.

ADJUDICATION NUMBER 2

QUALIFIED IMMUNITY BARS PLAINTIFFS CLAIMS AGAINST THE INDIVIDUAL OFFICERS, THUS BARRING 42 U.S.C § 1983CLAIMS

30. On September 3, 2008, at approximately 11:29 a.m., GGPD officers Richard Gendreau and Daniel Karschamroon were dispatched to a report of a "violent, mentally ill male" trying to break into the residence, that someone had been assaulted, and that there was an unknown "weapon" involved.

30. Karschamroon Decl., ¶¶ 1-5;
Gendreau Decl., ¶¶ 1-5; Exhibit 2,
Transcript/Audio 911 Recording;
Exhibit 3, Dispatch CAD

30. **Disputed:** Neither the 911
Transcript nor the Dispatch CAD state anything about a "violent, mentally ill male" trying to break into residence nor assaulting anyone. They both say this was a 5150 call and Andy needs to be taken to a hospital. The 911 caller never said Andy had weapons, the dispatcher made a mistake.

Exhibit 2, Transcript/Audio 911;
Defense Exhibit 3, Dispatch CAD.
As will be shown throughout
Gendreau's and Karschamroon's
Declaration are inconsistent with both
their Internal Affairs interviews and

Supporting Evidence: Defense

30. Neither the 911 audio nor the CAD dispatch refer to "5150" as claimed by Plaintiffs, but do refer to [Andy Tran] as being crazy, with weapons, and having committed an assault. Although requests were made to take [Andy] to the hospital, that does not constitute a genuine issue of material fact precluding summary judgment; officer actions are judged as to all information known or relied upon.

Karschamroon Decl., ¶¶ 1-5;
Gendreau Decl., ¶¶ 1-5; Exhibit 2,
Transcript/Audio 911 Recording;
Exhibit 3, Dispatch CAD.

	Deposition Testimony.	
	Supporting Evidence: Exhibit C,	
	Deposition of Gendreau, pp. 305: 5-25;	
	Exhibit I, Gendreau GGPD Internal	
	Affairs Interview, pp. 17-18.	
31. Police Dispatch as well as the	31. Disputed: Dispatch apparently did	31. Plaintiffs do not dispute
CAD printout noted the male subject	not understand 911 call because the	Defendants' UMF, but rather argue that
(Andy Tran) was a "mental case" and	911 caller said nothing about weapons.	police dispatch erroneously concluded
"crazy," that he had weapons, and that a	Dispatch does indicate major	that Andy had weapons. This does not
crying child could be heard in the	languange barrier between 911 caller	constitute a genuine issue of material
background. The reporting party	and dispacth. The CAD printout clearly	fact precluding summary judgment;
indicated that he was dizzy and he	shows this was a 5150 call and	officer actions are judged as to all
would not answer questions about Andy	Gendreau testified he was given further	information known or relied upon, and
Tran's location, and kept repeating	information of Andy's prior mental	it remains undisputed that Dispatch
"send someone right now, send	health history. The CAD clearly states	relayed information that Andy was
someone right now. Take to hospital."	Andy needs to be taken to the hospital.	crazy, with weapons, and had
31. Karschamroon Decl., ¶ 6 Gendreau	Supporting Evidence: Exhibit C,	committed an assault. Further, the
Decl., ¶ 6; Exhibit 2, Transcript/Audio	Deposition of Gendreau, pp. 305: 5-25;	Plaintiffs citation to Officer Gendreau's
911 recording; Exhibit 3, Dispatch	Exhibit I, Gendreau GGPD Internal	deposition testimony does not support
CAD	Affairs Interview, pp. 17-18.	their assertion that he was aware of
		Andy's mental health history before

		arriving on scene, but rather only that
		he did not recall telling Internal Affairs
		that he acquired such knowledge. In
		any event, such knowledge would be
		immaterial in light of Andy's actual
		resistance while being detained, and the
		totality of the circumstances
		confronting the officers during that
		detention.
		Transcript/Audio 911 Recording;
		Exhibit 3, Dispatch CAD; Gendreau
		Depo., 305:5-25
32. Officers Karschamroon and	32. Disputed: Mark Zimmerman	32. The Plaintiff's citation to Mark
Gendreau arrived at approximately	testified he never saw Andy place any	Zimmerman's deposition does not
11:36 a.m., with Karschamroon first to	portion of his body in the window; in	support their assertion. Zimmerman
arrive. He noticed a male individual	fact he testified he began yelling as	testified that Andy stopped "directing
who appeared to be trying to break into	Andy taking off screen and Andy then	his attention towards opening the
or enter the residence through a	turned towards him at the same time	window and getting in the house" after
window, and broken screen nearby. As	Karschamroon arrived.	Officer Karschamroon ordered Andy to
Officer Karschamroon approached him,	Supporting Evidence: Exhibit A,	stop. In any event, this does not
his body halfway into the window and	Deposition of Mark Zimmerman, pp.	constitute a genuine issue of material

he appeared to be trying to grab	51: 9-22, 52: 1-24.	fact precluding summary judgment; it is
something from inside.		immaterial in light of Andy's actual
32. Karschamroon Decl., ¶ 7; Exhibit		resistance while being detained, and the
3, Dispatch CAD		totality of the circumstances
		confronting the officers during that
		detention.
		Zimmerman Depo., 50:1-19, 52:7-16
33. Officer Karschamroon was aware	33. Disputed: Officer Karschamroon	33. The Plaintiffs do not dispute Officer
through Dispatch the subject's name	testified he called Andy by his name	Karschamroon called Andy by name,
was Andy Tran, so he called out	Andy and he was uncertain if he	only the source of that information.
"Andy" three to four times to get his	learned Andy's name from hearing Mr.	Further, the cited deposition testimony
attention. Andy stopped, slowly turned	Zimmerman saying it or hearing	does not indicate how many times
around, and faced Officer	Andy's name from dispatch.	Officer Karschamroon called Andy's
Karschamroon. Andy was instructed to	Karschamroon testified Andy	name. The remainder of Defendants'
come down from the porch, which he	responded immediately and never	UMF remains unchallenged. In any
eventually did, approaching Officer	testified he yelled 3-4 times.	event, the Plaintiffs' evidence does not
Karschamroon with his hands at his	Supporting Evidence: Exhibit B,	constitute a genuine issue of material
sides.	Deposition of Daniel Karschamroon,	fact precluding summary judgment; it is
33. Karschamroon Decl., ¶¶ 8-10	pp. 245:15-25,246: 1-4.	immaterial in light of Andy's actual
		resistance while being detained, and the
		totality of the circumstances

		confronting the officers during that
		detention.
		Karschamroon Depo., 245:15-25,
		246:1-4
34. Officer Karschamroon could	34. Disputed: Karschamroon testified	34. Plaintiffs' evidence does not
Andy had a blank stare and appeared to	Andy had a confused, puzzled look on	constitute a genuine issue of material
be confused or unsure of what was	his face and appeared in need of	fact precluding summary judgment; it is
going on. Andy stopped his approach	medical help. Karschamroon testified	immaterial in light of Andy's actual
when he was approximately 20 feet	he told Andy to stop when he was 10-	resistance while being detained, and the
from the officer, who then asked Andy	15 feet away and put his hands on his	totality of the circumstances
to come closer. As Andy slowly	head and he complied. He never	confronting the officers during that
approached to within 10 feet of Officer	testified Andy ever stopped before	detention. In any event, the deposition
Karschamroon's location, he was	being told to do so and was told to	testimony of Officer Karschamroon
instructed to stop. Andy stopped, but	come closer.	cited by Plaintiffs is consistent with
maintained his blank expression.	Supporting Evidence: Exhibit B,	Defendants' UMF, namely, that Andy
34. Karschamroon Decl., $\P\P$ 11, 12	Deposition of Daniel Karschamroon,	was instructed to stop either "10 feet"
	pp. 244: 15-25, 259: 1-7, 257: 15-22,	or "10-15 feet" from Officer
	276: 19-25, 279: 14-16; Exhibit J,	Karschamroon's location. The cited
	Karschamroon GGPD Internal Affairs	deposition testimony does not include a
	Interview, pp. 5-6.	question whether Andy stopped at any
		time prior to being so instructed, and

		would be an immaterial variance
		regardless.
35. Andy was instructed to put his	35. Undisputed.	35. Undisputed.
hands on top of his head and turn		
around, and he slowly complied with		
the directive. Officer Karschamroon		
then approached Andy and told him to		
interlock his fingers, which he did.		
Andy never spoke, but did appear to		
understand what was being said.		
35. Karschamroon Decl., $\P\P$ 13, 14		
36. Grabbing Andy's hands, Officer	36. Disputed: Neither the 911	36. Plaintiffs' evidence does not
Karschamroon sought to reassure him	Transcript nor the Dispatch CAD state	dispute that Officer Karschamroon
by saying "there's nothing wrong,"	anything about a "violent, mentally ill	attempted to calm and relax Andy, nor
"we're just here to help you," and to	male" trying to break into residence nor	the nature of the call received by
"calm down" and "relax." However, it	assaulting anyone. They both say this	Dispatch. Neither the 911 audio nor the
was important to get Andy secured and	was a 5150 call and Andy needs to be	CAD dispatch refer to "5150" as
handcuffed as the call indicated he was	taken to a hospital. The 911 caller	claimed by Plaintiffs, but do refer to
a violent mental individual with a	never said Andy had weapons, the	[Andy Tran] as being crazy, with
weapon.	dispatcher made a mistake. Given most	weapons, and having committed an
36. Karschamroon Decl., ¶¶ 14	of Karschamroon's Declaration is	assault. Although requests were made

		7
	vastly different than his Internal Affairs	to take [Andy] to the hospital, that does
	Interview and Deposition Testimony	not constitute a genuine issue of
	anything he says he did is subject to	material fact precluding summary
	impeachment now for prior inconsitent	judgment; officer actions are judged as
	statements, thereby everything in his	to all information known or relied
	Declaration should be viewed with	upon.
	Suspicion.	Karschamroon Decl., $\P\P$ 1-5;
	Supporting Evidence: Defense	Gendreau Decl., $\P\P$ 1-5; Exhibit 2,
	Exhibit 2, Transcript/Audio 911;	Transcript/Audio 911 Recording;
	Defense Exhibit 3, Dispatch CAD.	Exhibit 3, Dispatch CAD.
37. As the first handcuff went on	37. Disputed: Officer Karschamroon	37. Plaintiffs argue semantics but do
Andy's right wrist, his hands	never told Internal Affairs Andy's	not dispute any material fact. Officer
immediately tensed up into fists.	hands ever balled into fists and he	Karschamroon testified at his
Officer Richard Gendreau arrived	testified repeatedly that Andy's hands	deposition that when a handcuff was
Officer Karschamroon was trying to	always remained interlocked after he	placed on Andy's right wrist, Andy
separate Andy's now-clenched fists.	was told to do so and he never saw	"tensed" and Officer Karschamroon
37. Karschamroon Decl., ¶ 15	Andy's hands ball into fists.	"could feel his fingers closing, kind of
	Karschamroon further testified he did	curling up from that interlocked
	not know whether Andy's tension was a	position" and "close up as if the fingers
	result of his attempt to follow the last	were curling." Officer Karschamroon
	command given to interlock his fingers.	also stated in his deposition that Andy

	He also testified Andy was never	was "actively resisting" and that he
	aggressive.	"thought it might turn violent."
	Supporting Evidence: Exhibit J,	Karschamroon Depo., 321:22-322:22,
	Karschamroon GGPD Internal Affairs	362:12-17, 366:14-19
	Interview, pp. 7-8; Exhibit B,	
	Deposition of Daniel Karschamroon,	
	pp. 261: 12-18, 264: 17-20, 265: 13-18,	
	268: 9-10, 270: 10-11, 281: 9-25, 284:	
	1-25, 285: 1-6.	
38. Officer Gendreau noticed the	38. Disputed: Officer Gendreau said	38. Plaintiffs do not dispute any
struggle to get Andy's arms behind his	he walked fast and did not run. Officer	material fact, argue semantics, and
back, so he immediately ran over to	Karschamroon testified he never	mischaracterize testimony. Mark
assist. Officer Gendreau was told that	struggled with Andy is Gendreau's	Zimmerman confirmed that Officer
one handcuff was secured, but that	presence nor tried to force Andy's	Gendreau approached at "a pretty fast
Andy was not allowing himself to be	hands behind his back. Karschamroon	pace." Officer Gendreau testified that
cuffed. Officer Karschamroon had a	never said Andy would not allow self	Officer Karschamroon told him that
concern that the encounter might turn	to be handcuff and said he told	Andy was tensed up and that he
violent due to Andy's reaction when the	Gendreau Andy was complying but	couldn't get Andy's hands behind his
first handcuff was placed on his wrist.	hands tensed when placed first	back into a handcuffing position. This
38. Karschamroon Decl., ¶¶ 16, 17;	handcuff on. Also	is consistent with Officer
Gendreau Decl., ¶¶ 7, 8	Karschamroon and Zimmerman	Karschamroon's testimony that he told

	disagree with most of what Gendreau	Gendreau that Andy was complying
	said occured and both Gendreau and	and tensed up after one handcuff was
	Karschamroon have now filed	secured. Nothing in the cited testimony
	Declarations which are filed with	disputes that Andy continued to resist
	inconsistent statements from their	after Gendreau arrived. Further, Mark
	Internal Affairs Interviews and	Zimmerman testified that Officer
	Deposition Testimony their	Gendreau did assist Officer
	Declarations should be viewed with	Karschamroon by putting "his hands on
	suspicion.	Andy's hands or on the other officer's
	Supporting Evidence: Exhibit C,	hands or in that vicinity" for "about 20
	Deposition of Richard Gendreau, pp.	seconds" in what appeared to him as an
	175: 1-25, 176: 1-25, 177: 1-5, 206:	effort to "keep more control" of Andy.
	19-25; Exhibit B, Deposition of Daniel	Zimmerman Depo., 92:19-25, 93:16-
	Karschamroon, pp. 285: 11-13;	19, 209:7-22; Gendreau Depo.,
	Karschamroon GGPD Internal Affairs	175:20-24; Karschamroon Depo.,
	Interview, pp. 9.	285:11-14.
39. Andy continued to resist, failed	39. Disputed: Officer Karschamroon	39. Plaintiffs' evidence does not
to obey commands, and did not speak.	had full control of Andy and there was	dispute any material fact, and does not
Officer Gendreau could see that Andy's	never a struggle between the two.	indicate that Officer Karschamroon had
method of resistance was "complete	Officer Karschamroon testified he	full control of Andy or that there was
rigidity"; both of his arms were up, his	never struggled with Andy is	no resistance. Plaintiffs ignore Officer

fists were balled, and he was shaking.

Despite Officer Karschamroon's best efforts to pull Andy's arms down behind his back, his arms would not move.

39. Karschamroon Decl., ¶ 16
Gendreau Decl., ¶ 9

Gendreau's presence nor tried to force Andy's hands behind his back. Karschamroon never said Andy would not allow self to be handcuff and said he told Gendreau Andy was complying but hands tensed when placed first handcuff on. Also given Karschamroon and Zimmennan disagree with most of what Gendreau said occured and both Gendreau and Karschamroon have now filed Declarations which are filed with inconsistent statements from their Internal Affairs Interviews and Deposition Testimony their Declarations should be viewed with suspicion. Supporting Evidence: Exhibit C,

Deposition of Richard Gendreau, pp. 175: 1-25, 176: 1-25, 177: 1-5,206: 19-25; Exhibit B, Deposition of Daniel

Karschamroon testimony that when a handcuff was placed on Andy's right wrist, Andy "tensed" and Officer Karschamroon "could feel his fingers closing, kind of curling up from that interlocked position" and "close up as if the fingers were curling." Officer Karschamroon also stated in his deposition that Andy was "actively resisting" by not allowing his arms to be pulled apart and providing tension to pull his arms together, and that he "thought it might turn violent." Nothing in Plaintiffs' cited testimony disputes that Andy continued to resist after Gendreau arrived. Further, Mark Zimmerman testified that Officer Gendreau did assist Officer Karschamroon by putting "his hands on Andy's hands or on the other officer's

	Karschamroon, pp. 285: 11-13;	hands or in that vicinity" for "about 20
	Karschamroon GGPD Internal Affairs	seconds" in what appeared to him as an
	Interview, pp. 9.	effort to "keep more control" of Andy.
		Karschamroon Depo., 321:22-322:22,
		280:12-23, 362:12-17, 366:14-19,
		Zimmerman Depo., 92:19-25, 93:16-
		19, 209:7-22
40. To prevent a possible escape,	40. Disputed: Officer Karschamroon	40. Plaintiffs do not dispute any
Officer Gendreau moved in front of	testified he was a foot from Andy and	material fact precluding summary
Andy. From that position, he could see	1-3 feet from Gendreau and He never	judgment. The assertion that Andy did
that Andy was shaking and he began to	heard Andy growl or see his foaming at	not try to escape does dispute Officer
growl. Andy was not blinking, his	the mouth, or see Andy shaking other	Gendreau's motivation for positioning
pupils appeared to be dilated, and he	than when Karschamroon shook Andy	himself in front of Andy. Further,
had saliva coming from the corner of	hands, which moved, to let Andy know	Officer Karschamroon was positioned
his mouth, almost as though he was	he was still behind him. Gendreau	behind Andy, and was not in a position
foaming at the mouth. Officer	testified he never feared Andy would	to see Andy's face at the time he was
Gendreau felt like Andy was looking	flee or run. Karschamroon testified	tased. As to the issue of Andy
straight through him.	Andy never made a movement	growling, Mark Zimmerman testified
40. Karschamroon Decl., ¶ 16	consisting with fleeing or running away	that although he never saw Andy's lips
Gendreau Decl., ¶¶ 10, 11	Supporting Evidence: Exhibit B,	moving, he heard some audible things
	Deposition of Daniel Karschamroon,	coming out of his mouth. Zimmerman

	pp. 261: 12-18, 264: 17-20, 284: 1-25,	also testified that he could see subtle
	285: 1-6, 330: 11-15; Declaration of	movement going on between the
	Daniel Karschamroon, pp. 384: 18,	officers and Andy and that there could
	385: 1-5; Exhibit C, Deposition of	have been a "whole 'nother [sic] set of
	Richard Gendreau, pp. 174: 14-17;	scenarios going on" that he did not see.
	176: 1-25, 177: 1-10,182: 2-23,187: 1-	Karschamroon Depo., 348:9-15,
	8,220: 1-24, 225: 17-24, 266: 1-10.	355:16-19, Zimmerman Depo., 217:3-
		9, 222:11-223:13, 276:22-25
41. In a casual manner, Officer	41. Disputed: Officer Karschamroon	41. Plaintiffs do not dispute
Gendreau said words to the effect of,	testified the only thing he heard	Defendants' UMF that the officers
"Hey, dude, just calm down," and	Gendreau say was "Hey, dude, calm	attempted to relax and calm Andy while
advised Andy to relax, put his hands	down." Gendreau never ackowledged	attempting to secure him, but rather
behind his back, and that "we're not	he said "dude calm down".	dispute the exact words spoken. This
here to hurt you." Officer	Karschamrron testified Gendreau never	does not create a genuine issue of
Karschamroon was reminding Andy to	told Andy to put his hands behind his	material fact precluding summary
relax as well, but he was also shaking	back and the only shaking he saw from	judgment. Further, it is immaterial that
Andy's still clenched hands to let him	Andy was Karschamroon shaking	Officer Karschamroon may not have
know he still needed to be handcuffed.	Andy to let him know he was there.	said anything to Andy about being
41. Karschamroon Decl., $\P\P$ 19, 20;	Karschamroon testifed he never said	handcuffed since the act of attempting
Gendreau Decl., $\P\P$ 12, 13	anything to Andy about being	to handcuff him established the
	handcuffed.	officer's intention. Officer

	Supporting Evidence: Exhibit B,	Karschamroon's deposition testimony
	Deposition of Daniel Karschamroon,	that Andy was not allowing his arms to
	pp. 282, 345: 1-18, 268: 19-23, 269: 1-	be pulled apart and was providing
	4; 419, Exhibit B, Deposition of Daniel	tension to pull his arms together
	Karschamroon, pp. 328: 1-7,330: 11-	demonstrates resistance to that
	15/17-25, 337: 10-16, 340: 8-9, 341: 7-	intention.
	16.	Karschamroon Depo., 321:22-322:22,
		280:12-23, 362:12-17, 366:14-19
42. Andy continued to ignore the	42. Disputed: Gendreau said he did	42 Plaintiffs do not dispute any
officers' orders, and concern grew that	not believe Andy understood anything	material fact precluding summary
the dangling handcuff could be used as	he said so how can he claim Andy	judgment and mischaracterize
a weapon if Andy decided to swing his	ignored an order? Further,	testimony. Officer Karschamroon did
arm. Both officers then attempted to	Karschamroon testified that neither	not testify that "relax" and "calm
pry Andy's arms down but could not	"relax" or "dude calm down" were	down" were not lawful orders.
overcome his flexed/locked position. A	lawful orders. Both Karshamroon and	Although he did testify he had not
pain compliance technique performed	Zimmennan said Gendreau never	received training that such commands
by Officer Gendreau did nothing.	struggled with Andy except to taser	were lawful orders, he stated that the
42. Karschamroon Decl., ¶¶ 21, 22;	him. Karschamroon testified repeatedly	commands given were appropriate
Gendreau Decl., ¶¶ 12, 14-16	he never saw Gendreau touch Andy	given the goal of relaxing Andy.
	and did not struggle either alone or	Officer Karschamroon also stated in his
	with Gendreau to get Andy's ann	deposition that Andy was "actively

behind his back.

Karschamroon testified he always had ahold of the loose handcuff so it could not be dangling and used as a weapon. Again, given the many new statements which are completely inconsitent with statements made to Internal Affairs and during Deposition testimony puts the credibility of Karschamroon and Gendreau is great doubt and their Declarations should be viewed with extreme caution.

Supporting Evidence: Exhibit B,
Deposition of Daniel Karschamroon,
pp. 273: 8-11, 274, 292: 17-23, 293: 1,
331: 16-25, 332: 18-21, 333: 7-11;
Karschamroon GGPD Internal Affairs
Interview, pp. 7-8.; Exhibit A,
Deposition of Mark Zimmerman, pp.
79:11-20,80: 10-16, 81: 4-5, 83: 18-25,

resisting" by not allowing his arms to be pulled apart and providing tension to pull his arms together, and that he "thought it might turn violent." Nothing in Plaintiffs' cited testimony disputes that Andy continued to resist after Gendreau arrived. Further, Mark Zimmerman testified that Officer Gendreau did assist Officer Karschamroon by putting "his hands on Andy's hands or on the other officer's hands or in that vicinity" for "about 20 seconds" in what appeared to him as an effort to "keep more control" of Andy. Nothing in Zimmerman's testimony disputes the officers' account of Andy's resistance other than his own speculation. Zimmerman testified that he could see subtle movement going on between the officers and Andy and that

85:1-10,87: 3-7/16-23,97: 5-6, 100: 1there could have been a "whole 'nother 25, 102: 4-9/20-24,150: 20-25, 151: 9-[sic] set of scenarios going on" that he did not see. He could not hear what 11, 197:20-25,198: 1-5,209:23-25, 222:17-25,224: 6-12, 276: 10-20,277: was being said, and although his 1-4, 278: 18-21. eyesight is admittedly impaired, he never wears his prescription contact lens. Zimmerman observed the incident from a distance of approximately 40-50 feet could not tell what small, detailed movements were occurring. He does not know whether the officers tried to move Andy's hands from the top of his head, and admits that many things could have been said or done which he could not observe or

hear. While Zimmerman testified that

Andy's hands were on his head at all

any kind of struggle

times, he cannot say whether there was

		280:12-23, 283:20-284:20, 362:12-17,
		366:14-19, Zimmerman Depo., 22:3-7,
		82:11-18, 92:19-25, 93:16-19, 96:2-10,
		100:7-20, 162:11-19, 187:3-11,
		200:11-24, 201:6-12, 209:7-22, 217:3-
		9, 222:11-223:13, 276:22-25, 287:25-
		288:12.
43. Officer Gendreau thought that if	43. Disputed: Karschamroon and	43. Plaintiffs' evidence does not
a fight ensued, it was going to be a bad	Zimmerman both testified Gendreau	dispute any material fact. Plaintiffs
one given the strength that Andy had	never struggled to force Andy's hands	ignore Officer Karschamroon's
exhibited when resisting both officers	behind back. Karschamroon said	testimony that when a handcuff was
attempt to lower his arms. Officer	Gendreau never touched Andy.	placed on Andy's right wrist, Andy
Karschamroon was similarly concerned	Karschamroon testified when he shook	"tensed" and Officer Karschamroon
about officer safety.	Andy's hands they moved so the	"could feel his fingers closing, kind of
43. Karschamroon Decl., ¶ 21;	extraordinary strength Gendreau said	curling up from that interlocked
Gendreau Decl., ¶ 19	Andy had is disputed by	position" and "close up as if the fingers
	Karschamroon.	were curling." Officer Karschamroon
	Supporting Evidence: Exhibit B,	also stated in his deposition that Andy
	Deposition of Daniel Karschamroon,	was "actively resisting" by not allowing
	pp.273: 8-11 ,274, 292: 17-23, 293: 1,	his arms to be pulled apart and

331: 16-25, 332: 18-21, 333: 7-11; Karschamroon GGPD Internal Affairs Interview, pp. 7-8.; Exhibit A, Deposition of Mark Zimmerman, pp.79: 11-20, 80: 10-16, 81:4-5, 83: 18-25, 85: 1-10, 87: 3-7/16-23, 97: 5-6, 100: 1-25, 102: 4-9/20-24, 150: 20-25, 151: 9-11, 197:20-25, 198: 1-5, 209 :23-25, 222: 17-25, 224: 6-12, 276: 10-20, 277: 1-4, 278: 18-21.

providing tension to pull his arms together, and that he "thought it might turn violent." Nothing in Plaintiffs' cited testimony disputes that Andy continued to resist after Gendreau arrived. Further, Mark Zimmerman testified that Officer Gendreau did assist Officer Karschamroon by putting "his hands on Andy's hands or on the other officer's hands or in that vicinity" for "about 20 seconds" in what appeared to him as an effort to "keep more control" of Andy. Nothing in Zimmerman's testimony disputes the officers' account of Andy's resistance other than his own speculation. Karschamroon Depo., 321:22-322:22, 280:12-23, 362:12-17, 366:14-19, Zimmerman Depo., 22:3-7, 82:11-18, 92:19-25, 93:16-19, 96:2-10, 100:7-20,

		162:11-19, 187:3-11, 200:11-24,
		201:6-12, 209:7-22, 217:3-9, 222:11-
		223:13, 276:22-25, 287:25-288:12.
44. As Andy continued to resist	44. Disputed: Karschamroon testified	44. Plaintiffs do not dispute any
officer commands by remaining rigid	after he told Andy to interlock his	material fact precluding summary
and non-responsive, Officer Gendreau	fingers Andy was only told to relax or	judgment and mischaracterize
decided to take out his Taser. Andy	"dude calm down" which	testimony. Officer Karschamroon
was informed several times that if he	Karschamroon testified were not lawful	testified that Officer Gendreau did warn
did not comply, he would be tased.	orders. Gendreau testified he did pot	Andy that he would be tased if he did
Andy continued to resist, so Officer	believe Andy understood anything he	not calm down, and Zimmerman
Gendreau deployed his taser once in	said so it would be difficult for him to	testified that Officer Gendreau had his
Andy's thigh for a cycle of five	"resist" non lawful "commands".	hands on top of Andy's hands for about
seconds.	Karschamroon testified Gendreau told	20 seconds before stepping to the side
44. Karschamroon Decl., ¶¶ 22-25;	him "Danny I'm just going to Tase	to taser him.
Gendreau Decl., ¶¶ 20-23	him" and Karschamroom testified	Karschamroon Depo., 331:6-12,
	Gendreau never told Andy he was	Zimmerman Depo., 208:8-209:17
	going to be tasered. Zimmerman said	
	Gendreau stepped to Andy's side and	
	immediatly tasered him.	
	Supporting Evidence: Exhibit A,	

	Deposition of Mark Zimmerman, pp.	
	108: 1-11/18-24, 110: 1-13/22-25, 111:	
	10-17/18-22, 112: 25, 121: 6-11/15-24,	
	123: 15-25, 240: 21-25, 242: 13-25,	
	243: 11-16, 244: 12-15, 246: 7-19;	
	Exhibit B, Deposition of Daniel	
	Karschamroon, pp. 397: 7-8; Exhibit D,	
	Deposition of Richard Fukumoto,	
	M.D., pp. 90: 13-16, 258: 16-19, 259:	
	2-23, 260: 1-10, 261: 13-15, 264: 21-	
	24, 266: 13-22, 268:6-22, 280: 19-25,	
	281: 10-25, 282: 7-15, 283: 4-16/21-	
	23; Exhibit E, Deposition of Bua Thi	
	Phan, pp. 243.1: 16-18; 256.1: 2-5.	
45. Prior to deploying the taser,	45. Disputed: GGPD General Order	45. Plaintiffs do not dispute any
Officer Gendreau also attempted to	5.31 states the IVS Unit must be	material fact precluding summary
activate his audio recording system and	activated when a detention was going	judgment. The General Orders are
the one in his police unit, although he	to occur. Gendreau testified he saw	simply "guidelines," and the purpose of
was too far away for remote avtivation.	Karschamroon detaining Andy when he	the In-Car Video System (IVS) is to
Based on the nature of the call and	arrived yet failed to activate his IVS	provide an accurate, unbiased

rapidly evolving events, activating a recorder or his in-unit video during this incident was "not at the forefront" of Officer Karschamroon's thoughts.

45. Karschamroon Decl., ¶ 41; Gendreau Decl., ¶ 20

Unit; Karschamroon testified he thought IVS Unit activation was completely within his discretion. No where in the GGPD General Orders does it indicate "rapidly evolving events" warrant ignoring orders. The fact Gendreau claims to have attempted to activate his IVS Unit shows he had time and should have called for a supervisor and medics before tasering Andy as required by GGPD General Order 2.25. Further, given the major credibility issues of all involved officers Plaintiffs do not believe the Court should not accept the IVS recordings were destroyed. GGPD General Order 5.31 states if IVS fails to activate a work order must be completed and Gendreau never did the required paperwork.

audiovisual record of enforcement related and non-criminal incidents that will enhance criminal prosecutions and limit civil liabilities. The policy is nonpunitive in nature, and no disciplinary action for violations of this policy will be proposed unless the employee refuses either actively or passively, as demonstrated by repeated instances of his/her failure. Summoning Fire Department Paramedics before the use of a Taser is only recommended, if practical, under the circumstances. General Order 2.24, 5.31, General Order, "Statement by the Chief of Police"

	Supporting Evidence: Exhibit C,	
	Deposition of Richard Gendreau, pp.	
	97-98, 109: 20-23; Exhibit H, GGPD	
	General Order 2.24, 5.31.	
46. Officer Gendreau was trained that	46. Disputed: Gendreau testified he	46. Plaintiff's evidence does not
one of the best ways to get a subject on	believed that Andy was under the	constitute a genuine issue of material
the ground is to tase them in the leg.	influence of a Central Nervous System	fact precluding summary judgment; it is
His goal was to take Andy into custody	stimulant before he tasered Andy and	immaterial in light of Andy's actual
without any further risk of injury to	knew and had been trained that tasering	resistance while being detained, and the
Andy, Officer Karschamroon or	Andy could cause his immediate death.	totality of the circumstances
himself.	Given theses facts it is difficult to	confronting the officers during that
46. Gendreau Decl., ¶ 22	believe Gendreau did not believe to	detention. Officer Karschamroon
	injure Andy. Further, GGPD General	testified that he did not feel it was
	Orders state a medic and supervisor	necessary to take out any weapon only
	should be called prior to tasering a	up to the point of placing the first
	subject. Gendreau testified he tried to	handcuff on Andy's wrist. Officer
	activate his IVS and Lux testified it	Gendreau testified that Andy's conduct
	would have take 1-3 seconds to call for	and appearance was indicative of
	a medic and supervisor. Gendreau said	someone who potentially is going to
	Andy was not resisting, being	throw a punch. Plaintiffs' misrepresent

aggressive or looking like would flee when he wass tasered so there was no rush to taser Andy. Andy was therefore a non comabative subject per GGPD General Order 2.6 and Lux testified he trained his students including Gendreau not taser such subjects.

Karschamroon testified he saw no reason to take out any weapons against Andy and had no idea why Gendreau was tasering Andy. Lux testified Karshamroon as the first officer on scene should have detennined why Gendreau was going to taser Andy.

Supporting Evidence: Exhibit B,

Deposition of Daniel Karschamroon,

pp. 251: 17-25, 252: 1-118, 355: 21-24,

357: 3-18, 360: 1-6; Exhibit C,

Deposition of Richard Gendreau, pp.

96: 1-16,174: 14-17; 176: 1-25, 177: 1-

the testimony of Benedict Lux, which was based on incomplete hypothetical questioning and not on facts relevant to this case.

Karschamroon Depo., 251:21-252:6, Gendreau Depo., 178:5-16.

	10, 182: 2-23, 187: 1-8, 220: 1-24, 225:	
	17-24, 266: 1-10, 327: 17-22, 328: 1-	
	14/20-25, 329: 1-18; Exhibit F,	
	Deposition of Benedict Lux, pp. 176:	
	15-22,177:7-20,178:5-14,179: 5-12,	
	204: 1-25, 205: 1-15, 206: 9-22, 209:	
	1-25, 210: 8-18, 211: 9-11, 212: 13-18,	
	244: 14-25, 247: 21-25, 252: 21-25, pp.	
	253: 1-3/5-12, 254, 255: 1-5/12-15;	
	Exhibit H, GGPD General Order 2.24,	
	2.6; Exhibit J, Karschamroon GGPD	
	Internal Affairs Interview, pp. 15.	
47. Once Andy was tased, he began	47. Disputed: Zimmerman testified	47. Plaintiff's evidence does not
to fall backward toward Officer	Andy fell hard to the ground after the	constitute a genuine issue of material
Karschamroon, who caught him and	tasering like a "sack of potatoes" and	fact precluding summary judgment; it is
laid him forward onto the ground.	saw nothing consistent with Andy	immaterial in light of Andy's actual
Andy also released his grip, and once	being gently placed on the ground.	resistance while being detained, and the
the taser cycle stopped, the officers	Zimmeman testified Andy was a fat	totality of the circumstances
were able to bring his left arm behind	guy and the officers could not have	confronting the officers during that
his back and apply the other handcuff to	placed him gently down if they wanted.	detention. Zimmerman has had no

secure his arms.	Zimmerman testified when Andy hit	medical training. Although his eyesight
47. Karschamroon Decl., ¶ 26;	the ground was dead and never moved	is admittedly impaired, he never wears
Gendreau Decl., $\P\P$ 24, 25	again on his own.	his prescription contact lens.
	Supporting Evidence: Exhibit A,	Zimmerman observed the incident from
	Deposition of Mark Zimmerman, pp.	a distance of approximately 40-50 feet
	108: 1-11/18-24, 110: 1-13, 240: 21-	and could not tell what small, detailed
	25, 242: 13-25,243: 11-16.	movements were occurring.
		Zimmerman testified that it was
		possible that Andy was breathing after
		being tased and that he just did not
		observe it, and that his belief that Andy
		was dead is not based on any actual
		evidence
		Zimmerman Depo. pp. 22:3-7, 162:11-
		19, 180:20-21; 201:6-12, 293:23-
		294:12
48. At approximately 11:38 a.m.,	48. Disputed: GG Fire Department	48 Plaintiff's evidence does not
Officer Gendreau advised over his	paramedics were not dispached until	constitute a genuine issue of material
police radio that the situation was	11:39:38. Per Lux and GGPD General	fact precluding summary judgment; it
stable, but that Andy had been tased and	Order 2.24 states medics should be	remains undisputed that GG Fire

he requested Garden Grove Fire	called before any tasering and a	Department paramedics were promptly
Department to respond to examine	supervisor must be called before a	dispatched after Andy was tased.
Andy per their protocol when a subject	tasering. Sergeant Wagner was not	General Orders are guidelines and not
is tased. At approximately 11:39 a.m.,	requested until 11:46.	an independent mechanism to pursue
Garden Grove Fire Department was	Supporting Evidence: Exhibit D,	civil liability.
dispatched to the incident scene in	Deposition of Richard Fukumoto,	General Orders, "Statement by the
reference to Andy being tased.	M.D., pp. 90: 13-16, 282: 7-15, 283:4-	Police Chief"
48. Karschamroon Decl., ¶ 27;	16/21-23; Exhibit F, Deposition of	
Gendreau Decl., ¶ 26; Exhibit 3	Benedict Lux, pp. 249: 15-25, 250: 9-	
Dispatch CAD	10, 260: 13-25, 262: 15-25, 263: 1-3;	
	Exhibit H, GGPD General Order 2.24;	
	Exhibit K., Sergeant Wagner's report.	
49. As he was handcuffed and on the	49. Disputed: Zimmerman testified	49. Plaintiff's evidence does not
ground, Andy looked in various	Andy fell hard to the ground after the	constitute a genuine issue of material
directions. Officer Gendreau continued	tasering like a "sack of potatoes" and	fact precluding summary judgment; it is
to instruct him to relax, and informed	saw nothing consistent with Andy	immaterial in light of the undisputed
him they were in the process of getting	being gently placed on the ground.	fact that GG Fire Department
him medical attention. When asked if	Zimmeman testified Andy was a fat	Paramedics were promptly summoned.
he was doing okay, Andy remained	guy and the officers could not have	In any event, Zimmerman has had no
unresponsive but continued to look	placed him gently down if they wanted.	medical training, and although his

Zimmerman testified when Andy hit

around.

49. Karschamroon Decl., ¶ 30; Gendreau Decl., ¶ 27 the ground was dead and never moved again on his own. Karschamroon testifed Gendreau opened up Andy's eyes and Karschamroon could not tell if Andy was breathing. Zimmerman said he saw Gendreau slapping Andy's face and saying "to stop faking". Bua Phan also testified Andy died immediately after the tasering. Dr. Fukumoto testified the evidence is consistent with Andy being dead immediately after he saw tasered. Supporting Evidence: Exhibit A, Deposition of Mark Zimmerman, pp. 108: 1-11/18-24, 110: 1-13/22-25, 111: 10-17/18-22, 112: 25, 121: 6-11/15-24,123: 15,- 25, 240: 21-25, 242: 13-25, 243: 11-16,244: 12-15,246: 7-19;

eyesight is admittedly impaired, he never wears his prescription contact lens. Zimmerman observed the incident from a distance of approximately 40-50 feet and could not tell what small, detailed movements were occurring. Zimmerman testified that it was possible that Andy was breathing after being tased and that he just did not observe it, and that his belief that Andy was dead is not based on any actual evidence. Dr. Fukumoto testified that he has no way of knowing when Andy died and that he relies on the physician's death pronouncement as to the time of death. Zimmerman Depo., 22:3-7, 162:11-19, 180:20-21; 201:6-12, 293:23-294:12; Fukumoto Depo., 187:19-188:5, 258:7-259:25

Exhibit B, Deposition of Daniel

	Karschamroon, pp. 397: 7-8; Exhibit D,	
	Deposition of Richard Fukumoto,	
	M.D., pp. 90: 13-16, 258: 16-19, 259:2-	
	23, 260: 1-10, 261: 13-15, 264: 21-24,	
	266: 13-22, 268:6-22, 280: 19-25, 281:	
	10-25, 282: 7-15, 283: 4-16/21-23;	
	Exhibit E, Deposition of Bua Thi Phan,	
	pp. 243.1: 16-18; 256.1: 2-5.	
50. After the tasing, a third officer	50. Disputed: Zimmerman testified	50. Plaintiff's evidence does not
arrived on scene, Officer Amir El-Farra.	Andy fell hard to the ground after the	constitute a genuine issue of material
The officers decided to roll Andy over	tasering like a "sack of potatoes" and	fact precluding summary judgment; it is
on his back to observe him from the	saw, nothing consistent with Andy	immaterial in light of the undisputed
front. His eyes were closed, but a check	being gently placed on the ground.	fact that GG Fire Department
by Officer Gendreau found they were	Zimmeman testified Andy was a fat	Paramedics were promptly summoned.
dilated. Because of that and Andy's	guy and the officers could not have	In any event, Zimmerman has had no
labored breathing, the officers decided	placed him gently down if they wanted.	medical training, and although his
to sit him up against Officer El-Farra's	Zimmerman testified when Andy hit	eyesight is admittedly impaired, he
leg, thinking it might help with his	the ground was dead and never moved	never wears his prescription contact
breathing and help snap him out of the	again on his own. Zimmerman testified	lens. Zimmerman observed the
trance he appeared to be in.	when the police rolled Andy against an	incident from a distance of

50. Karschamroon Decl., $\P\P$ 29-34; Gendreau Decl., $\P\P$ 31-32; El-Farra Decl., $\P\P$ 6-8 officers legs he could clearly see Andy chest and stomach and he was clearly not breathing. Karschamroon testifed Gendreau opened up Andy's eyes and Karschamroon could not tell if Andy was breathing. Zimmerman said he saw Gendreau slapping Andy's face and saying "to stop faking". Bua Phan also testified Andy died immediately after the tasering.

Dr. Fukumoto testified the evidence is consistent with Andy being dead immediately after he saw tasered.

Supporting Evidence: Exhibit A, Deposition of Mark Zimmennan, pp. 108: 1-11/18-24, 110: 1-13/22-25, 111: 10-17/18-22,112: 25, 121: 6-11/15-24,

123: 15-25; 240: 21-25; 242: 13-25,

243: 11-16, 244: 12-15, 246: 7-19;

Exhibit B, Deposition of Daniel

approximately 40-50 feet and could not tell what small, detailed movements were occurring. Zimmerman testified that it was possible that Andy was breathing after being tased and that he just did not observe it, and that his belief that Andy was dead is not based on any actual evidence. Dr. Fukumoto testified that he has no way of knowing when Andy died and that he relies on the physician's death pronouncement as to the time of death.

Zimmerman Depo., 22:3-7, 162:11-19, 180:20-21; 201:6-12, 293:23-294:12; Fukumoto Depo., 187:19-188:5, 258:7-259:25

	Karschamroon, pp. 397: 7-8; Exhibit D,	
	Deposition of Richard Fukumoto,	
	M.D., pp. 90: 13-16, 258: 16-19, 259:	
	2-23, 260: 1-10, 261: 13-15, 264: 21-	
	24,266: 13-22, 268:6-22, 280: 19-25,	
	281: 10-25, 282: 7-15, 283: 4-16/21-	
	23; Exhibit E, Deposition of Bua Thi	
	Phan, pp. 243.1: 16-18; 256.1: 2-5.	
51. Given Andy's dilated pupils in	51. Disputed: Gendreau testified he	51. Plaintiff's evidence does not
bright sunlight and his rapid pulse,	believed that Andy was under the	constitute a genuine issue of material
Officer Gendreau did consider that he	influence of a Central Nervous System	fact precluding summary judgment; it is
may be under the influence of a	stimulant before he tasered Andy and	immaterial in light of Andy's actual
controlled substance, but he never had	knew and had been trained that tasering	resistance while being detained, and the
the opportunity to do a full evaluation.	Andy could cause his immediate death.	totality of the circumstances
51. Gendreau Decl., ¶ 37	Given theses facts it is difficult to	confronting the officers during that
	believe Gendreau did not believe to	detention. Officer Karschamroon
	injure Andy. Further, GGPD General	testified that he did not feel it was
	Orders state a medic and supervisor	necessary to take out any weapon only
	should be called prior to tasering a	up to the point of placing the first
	subject. Gendreau testified he tried to	handcuff on Andy's wrist. Officer

activate his IVS and Lux testified it would have take 1-3 seconds to call for a medic and supervisor. Gendreau said Andy was not resisting, being aggressive or looking like would flee when he wass tasered so there was no rush to taser Andy. Andy was therefore a non comabative subject per GGPD General Order 2.6 and Lux testified he trained his students including Gendreau not taser such subjects.

Karschamroon testified he saw no reason to take out any weapons against Andy and had no idea why Gendreau was tasering Andy. Lux testified Karshamroon as the first officer on scene should have detennined why Gendreau was going to taser Andy.

Supporting Evidence: Exhibit B,

Deposition of Daniel Karschamroon,

Gendreau testified that Andy's conduct and appearance was indicative of someone who potentially is going to throw a punch. Plaintiffs' misrepresent the testimony of Benedict Lux, which was based on incomplete hypothetical questioning and not on facts relevant to this case.

Karschamroon Depo., 251:21-252:6, Gendreau Depo., 178:5-16.

	pp. 251: 17-25, 252: 1-118, 355: 21-24,	
	357: 3-18, 360: 1-6; Exhibit C,	
	Deposition of Richard Gendreau, pp.	
	96: 1-16,174: 14-17; 176: 1-25, 177: 1-	
	10, 182: 2-23, 187: 1-8, 220: 1-24, 225:	
	17-24, 266: 1-10, 327: 17-22, 328: 1-	
	14/20-25, 329: 1-18; Exhibit F,	
	Deposition of Benedict Lux, pp. 176:	
	15-22,177:7-20,178:5-14,179: 5-12,	
	204: 1-25, 205: 1-15, 206: 9-22, 209:	
	1-25, 210: 8-18, 211: 9-11, 212: 13-18,	
	244: 14-25, 247: 21-25, 252: 21-25, pp.	
	253: 1-3/5-12, 254, 255: 1-5/12-15;	
	Exhibit H, GGPD General Order 2.24,	
	2.6; Exhibit J, Karschamroon GGPD	
	Internal Affairs Interview, pp. 15.	
52. As Andy was seated upright and	52. Disputed: Zimmerman testified	52. Plaintiff's evidence does not
leaning against Officer El-Farra's leg,	Andy fell hard to the ground after the	constitute a genuine issue of material
his breathing was observed to be	tasering like a "sack of potatoes" and	fact precluding summary judgment; it is
labored but no officer believed the	saw, nothing consistent with Andy	immaterial in light of the undisputed

situation to be critical. Officer

Karschamroon saw nothing to suggest a life-threatening situation, Officer

Gendreau "felt comfortable" upon hearing the approach of the medics, and Officer El-Farra could see Andy's chest rising and falling.

52. Karschamroon Decl., \P 35; Gendreau Decl., $\P\P$ 33-34; El-Farra Decl., $\P\P$ 10

being gently placed on the ground. Zimmeman testified Andy was a fat guy and the officers could not have placed him gently down if they wanted. Zimmerman testified when Andy hit the ground was dead and never moved again on his own. Zimmerman testified when the police rolled Andy against an officers legs he could clearly see Andy chest and stomach and he was clearly not breathing. Karschamroon testifed Gendreau opened up Andy's eyes and Karschamroon could not tell if Andy was breathing. Zimmerman said he saw Gendreau slapping Andy's face and saying "to stop faking". Bua Phan also testified Andy died immediately after the tasering.

Dr. Fukumoto testified the evidence is consistent with Andy being dead

fact that GG Fire Department Paramedics were promptly summoned. In any event, Zimmerman has had no medical training, and although his eyesight is admittedly impaired, he never wears his prescription contact lens. Zimmerman observed the incident from a distance of approximately 40-50 feet and could not tell what small, detailed movements were occurring. Zimmerman testified that it was possible that Andy was breathing after being tased and that he just did not observe it, and that his belief that Andy was dead is not based on any actual evidence. Dr. Fukumoto testified that he has no way of knowing when Andy died and that he relies on the physician's death pronouncement as to the time of death.

immediately after he saw tasered. Dr. Fukumoto also testified that if officers did see labored or heavy breathing they should have known Andy was in cardiad distress and taken off the handcuffs at a minimum. Supporting Evidence: Exhibit A, Deposition of Mark Zimmerman, pp.108: 1-11/18-24, 110: 1-13/22-25, 111: 10- 17/18-22, 112: 25, 121: 6-11/15-24, 123: 15-25, 240: 21-25, 242: 13-25, 243: 11-16, 244: 12-15, 246: 7-19; Exhibit B, Deposition of Daniel Karschamroon, pp. 397: 7-8; Exhibit D, Deposition of Richard Fukumoto, M.D., pp. 90: 13-16, 258: 16-19, 259: 2-23, 260: 1-10, 261: 13-15, 264: 21-24, 266: 13-22, 268:6-22, 280: 19-25, 281: 10-25, 282: 7-15, 283: 4-16/21-23; Exhibit E, Deposition of Bua Thi

Zimmerman Depo., 22:3-7, 162:11-19, 180:20-21; 201:6-12, 293:23-294:12; Fukumoto Depo., 187:19-188:5, 258:7-259:25

	Phan, pp. 243.1: 16-18; 256.1: 2-5.	
53. Officer Gendreau asked Officer	53. Zimmerman testified all police	53. Plaintiff's evidence does not
El-Farra to stay with Andy as he and	officers arrived outside until the	constitute a genuine issue of material
Officer Karschamroon ascertained the	paramedics arrived looking	fact precluding summary judgment; it is
welfare or condition of the calling party	increasingly more concerned because	immaterial in light of the undisputed
or family considering the nature of the	Andy was not moving. Per Exhibit 3	fact that GG Fire Department
call and the need to determine if anyone	of Defendants Motion El-Farra was on	Paramedics were promptly summoned.
had been injured or attacked by Andy.	scene at 11:38 and Paramedics did not	In any event, Zimmerman "thinks"
Officer El-Farra estimates that he was	arrive until 11:44 so El-Farra was on	Officers Karschamroon and Gendreau
in front of the residence, with Andy, for	scene for several minutes prior to the	remained with Andy until the
approximately 15 to 20 seconds	paramedics arrival.	paramedics arrived but concedes he lost
thereafter prior to medics arriving.	Supporting Evidence: Exhibit A,	track of them.
53. Karschamroon Decl., ¶¶ 35-36;	Deposition of Mark Zimmerman, pp.	Zimmerman Depo., 264:18-23, 267:12-
Gendreau Decl., ¶ 33-34; El-Farra	123: 15-25,246: 7-19, 251: 4, 264: 18-	14, 307:21-25
Decl., ¶ 11-12	25,265: 5-14118-25,267: 6-8.; Defense	
	Exhibit 3, Dispatch CAD.	
54. Officers Gendreau and	54. Disputed: Zimmerman testified all	54. Plaintiff's evidence does not
Karschamroon then contacted Andy's	police officers arrived outside until the	constitute a genuine issue of material
family inside the residence, but it	paramedics arrived looking	fact precluding summary judgment; it is
appeared the only individual who	increasingly more concerned because	immaterial in light of the undisputed
sustained an injury was Plaintiff Bua	Andy was not moving. Per Exhibit 3 of	fact that GG Fire Department

Thi Phan, who had sustained a scraped elbow. Her injury was measured and photographed.

54. Karschamroon Decl., ¶¶37-38; Gendreau Decl., ¶ 35; Exhibit 4, Photograph of Injury; Exhibit 5, Photograph of Screen Defedants Motion EI-Farra was on scene at 11:38 and Paramedics did not arrive until 11:44 so EI-Farra was on scene for minutes prior to the paramedics arrival. There has been no testimony by Karschamroon or Gendreau that they ever personally observed any injury nor photographed any injury to Bua Phan so there is a complete lack of foundation for this "new" testimony. Again, another example of recreating history by Karschamroon and Gendreau and another reason to disbelieve both of their Declarations. Further, the attached photographs were submitted late and beyond the Motion Cut-Off time. Supporting Evidence: Exhibit A, Deposition of Mark Zimmerman, pp.

Paramedics were promptly summoned.
In any event, Zimmerman "thinks"
Officers Karschamroon and Gendreau
remained with Andy until the
paramedics arrived but concedes he lost
track of them. Further, Plaintiffs do not
deny that Bua Thi Phan was injured in a
struggle with Andy.

Zimmerman Depo., 264:18-23, 267:12-14, 307:21-25

123: 15-25,246: 7-19, 251: 4,264: 18-

	25,265: 5-14/18-25,267: 6-8.; Defense	
	Exhibit 3, Dispatch CAD.	
55. An approaching medic was	55. Disputed: Zimmerman testified	55. Plaintiff's evidence does not
informed by Officer El-Farra about the	Andy fell hard to the ground after the	constitute a genuine issue of material
tasing and Andy's labored breathing.	tasering like a "sack of potatoes" and	fact precluding summary judgment; it is
The medic checked for Andy's pulse	saw nothing consistent with Andy	immaterial in light of the undisputed
and informed Officer El-Farra that he	being gently placed on the ground.	fact that GG Fire Department
needed to start CPR. This took Officer	Zimmeman testified Andy was a fat	Paramedics were promptly summoned.
El-Farra completely by surprise. When	guy and the officers could not have	In any event, Zimmerman has had no
he had looked away from Andy to	placed him gently down if they wanted.	medical training, and although his
speak to the medic, Andy had been	Zimmerman testified when Andy hit	eyesight is admittedly impaired, he
breathing. At no time did Officer El-	the ground was dead and never moved	never wears his prescription contact
Farra hear or see Andy stop breathing,	again on his own.	lens. Zimmerman observed the
or notice any other physical difficulties.	Zimmerman testified when the police	incident from a distance of
	rolled Andy against an officers legs he	approximately 40-50 feet and could not
55. El-Farra Decl., ¶ 13-17	could clearly see Andy chest and	tell what small, detailed movements
	stomach and he was clearly not	were occurring. Zimmerman testified
	breathing. Karschamroon testifed	that it was possible that Andy was
	Gendreau opened up Andy's eyes and	breathing after being tased and that he
	Karschamroon could not tell if Andy	just did not observe it, and that his

was breathing. Zimmerman said he saw Gendreau slapping Andy's face and saying "to stop faking". Bua Phan also testified Andy died immediately after the tasering. Dr. Fukumoto testified the evidence is consistent with Andy being dead immediately after he saw tasered.

Dr. Fukumoto also testified that if officers did see labored or heavy breathing they should have known Andy was in cardiad distress and taken off the handcuffs at a minimum.

Supporting Evidence: Exhibit A,
Deposition of Mark Zimmerman, pp.
108: 1-11/18-24, 110: 1-13/22-

11/15-24,123: 15-25,240: 21-25, 242:

25,111:10-17/18-22,112: 25, 121: 6-

13-25, 243: 11-16,244: 12-15,246: 7-

19; Exhibit B, Deposition of Daniel

belief that Andy was dead is not based on any actual evidence. Dr. Fukumoto testified that he has no way of knowing when Andy died and that he relies on the physician's death pronouncement as to the time of death.

Zimmerman Depo., 22:3-7, 162:11-19, 180:20-21; 201:6-12, 293:23-294:12; Fukumoto Depo., 187:19-188:5, 258:7-259:25

	Karschamroon, pp. 397: 7-8; Exhibit 0,	
	Deposition of Richard Fukumoto,	
	M.D., pp. 90: 13-16,258: 16-19,259:2-	
	23,260: 1-10,261: 13-15,264:21-24,	
	266:13-22,268: 6-22,280: 19-25,281:	
	10-25,282: 7-15, 283: 4-16121-23;	
	Exhibit E, Deposition of Bua Thi Phan,	
	pp. 243.1: 16-18; 256.1: 2-5.	
56. After checking the house, the	56. Disputed: Zimmerman testified	56. Plaintiff's evidence does not
Officers Gendreau and Karschamroon	Andy fell hard to the ground after the	constitute a genuine issue of material
started toward the front door. They	tasering like a "sack of potatoes" and	fact precluding summary judgment; it is
could then see the paramedics	saw nothing consistent with Andy	immaterial in light of the undisputed
performing CPR on Andy. This was a	being gently placed on the ground.	fact that GG Fire Department
"shock" and "surprise" to both officers.	Zimmerman testified Andy was a fat	Paramedics were promptly summoned.
56. Karschamroon Decl., ¶¶39;	guy and the officers could not have	In any event, Zimmerman has had no
Gendreau Decl., ¶ 38	placed him gently down if they wanted.	medical training, and although his
Genareau Dect., 30	Zimmerman testified when Andy hit	eyesight is admittedly impaired, he
	the ground was dead and never moved	never wears his prescription contact
	again on his own. Zimmerman testified	lens. Zimmerman observed the
	when the police rolled Andy against an	incident from a distance of

officers legs he could clearly see Andy chest and stomach and he was clearly not breathing. Karschamroon testifed Gendreau opened up Andy's eyes and Karschamroon could not tell if Andy was breathing. Zimmerman said he saw Gendreau slapping Andy's face and saying "to stop faking". Bua Phan also testified Andy died immediately after the tasering. Dr. Fukumoto testified the evidence is consistent with Andy being dead immediately after he saw tasered.

Dr. Fukumoto also testified that if officers did see labored or heavy breathing they should have known Andy was in cardiad distress and taken off the handcuffs at a minimum.

Supporting Evidence: Exhibit A,

approximately 40-50 feet and could not tell what small, detailed movements were occurring. Zimmerman testified that it was possible that Andy was breathing after being tased and that he just did not observe it, and that his belief that Andy was dead is not based on any actual evidence. Dr. Fukumoto testified that he has no way of knowing when Andy died and that he relies on the physician's death pronouncement as to the time of death.

Zimmerman Depo., 22:3-7, 162:11-19, 180:20-21; 201:6-12, 293:23-294:12; Fukumoto Depo., 187:19-188:5, 258:7-259:25

	Deposition of Mark Zimmennan, pp.	
	108: 1-11/18-24,110: 1-13/22-25,	
	111:10-17/18-22, 112: 25, 121: 6-	
	11115-24,123: 15-25,240: 21-25,242:	
	13-25, 243: 11-16,244: 12-15,246:7-	
	19; Exhibit B, Deposition of Daniel	
	Karschamroon, pp. 397: 7-8; Exhibit 0,	
	Deposition of Richard Fukumoto,	
	M.D., pp. 90: 13-16,258: 16-19,259:2-	
	23, 260: 1-10,261: 13-15,264: 21-	
	24,266:13-22,268:6-22,280: 19-25,281:	
	10-25,282: 7-15, 283: 4-16121 -23;	
	Exhibit E, Deposition ofBua Thi Phan,	
	pp. 243.1: 16-18; 256.1: 2-5.	
57. Although the paramedics rendered	57. Disputed: Dr. Fukumoto testified	57. Plaintiff's evidence does not
emergency care and transported to the	no drug played any role in Andy's	constitute a genuine issue of material
hospital, Andy Tran did not survive.	death and none where at fatal levels.	fact precluding summary judgment; it is
Toxicology results revealed substantial	He testified Andy died from being	immaterial in light of Andy's actual
levels of Diphenhydramine and	tasered and the evidence was consistent	resistance while being detained, the
Trihexylphenidyl in his system at the	with Andy dying immediatly after	totality of the circumstances

time of death.	being hit with the taser. Andy was in	confronting the officers during that
57. Exhibit 6, Toxicology Report	full cardiac arrest when the paramedics	detention, and in light of the undisputed
	arrived and his eyes were fixed and	fact that GG Fire Department
	dilated. Dr.	Paramedics were promptly summoned.
	Fukumoto has been qualified as an	In any event, the Plaintiffs' do not
	expert in interpreting toxicology results	dispute the Defendants' UMF, but Dr.
	in Courts.	Fukumoto opinion that the tasering was
	Supporting Evidence: Exhibit 0,	a factor in Andy's death was because he
	Deposition of Richard Fukumoto,	already had a bad heart and liver. Dr.
	M.D., pp.63: 1-8,66: 18-22,67: 4-5,90:	Fukumoto testified that he has no way
	13-16, 141: 5-25, 142: 6-7, 143: 2-3,	of knowing when Andy died and that
	228:13-25, 229: 20-25, 239: 10-14/19-	he relies on the physician's death
	25, 240: 1-25,243: 1-25,245: 17-25,	pronouncement as to the time of death.
	260:1-10,283: 4-16/21-23,296: 1-	Fukumoto Depo., 187:19-188:5,
	7,304: 1-3/16-18,305: 8-25,306: 1-	206:23 - 207:11, 258:7-259:25
	2/10-14,307:1-8/22-25,308: 5-7,309: 1-	
	5/18-22, 347: 1-4,355: 2-9.	

ADJUDICATION NUMBER 3

THE INDIVIDUAL OFFICERS ACTED REASONABLY WITH RESPECT TO DECEDENT'S MEDICAL NEEDS,
THUS BARRING 42 U.S.C § 1983 CLAIMS

- 59. On September 3, 2008, at approximately 11:29 a.m., GGPD officers Richard Gendreau and Daniel Karschamroon were dispatched to a report of a "violent, mentally ill male" trying to break into the residence, that someone had been assaulted, and that there was an unknown "weapon" involved.
- 59. Karschamroon Decl., ¶¶ 1-5; Gendreau Decl., ¶¶ 1-5; Exhibit 2, Transcript/Audio 911 Recording; Exhibit 3, Dispatch CAD.
- 59. **Disputed:** Neither the 911 Transcript nor the Dispatch CAD state anything about a "violent, mentally ill male" trying to break into residence nor assaulting anyone. They both say this was a 5150 call and Andy needs to' be taken to a hospital. The 911 caller never said Andy had weapons, the dispatcher made a mistake.
- Supporting Evidence: Defense
 Exhibit 2, Transcript/Audio 911;
 Defense Exhibit 3, Dispatch CD. As
 will be shown throughout Gendreau's
 and Karshamroon's Declaration are
 inconsitent with both their Internal
 Affairs interviews and Deposition
 Testimony.

Supporting Evidence: Exhibit C,

Deposition of Gendreau, pp. 305: 5-25;

dispatch refer to "5150" as claimed by Plaintiffs, but do refer to [Andy Tran] as being crazy, with weapons, and having committed an assault. Although requests were made to take [Andy] to the hospital, that does not constitute a genuine issue of material fact precluding summary judgment; officer actions are judged as to all information known or relied upon.

Karschamroon Decl., $\P\P$ 1-5;

Gendreau Decl., $\P\P$ 1-5; Exhibit 2,

Transcript/Audio 911 Recording;

Exhibit 3, Dispatch CAD.

	Exhibit I, Gendreau GGPD Internal	
	Affairs Interview, pp. 17-18.	
60. Police Dispatch as well as the	60. Disputed: Dispatch apparently did	60. Plaintiffs do not dispute
CAD printout noted the male subject	not understand 911 call because the	Defendants' UMF, but rather argue that
(Andy Tran) was a "mental case" and	911 caller said nothing about weapons.	police dispatch erroneously concluded
"crazy," that he had weapons, and that a	Dispatch does indicate major	that Andy had weapons. This does not
crying child could be heard in the	languange barrier between 911 caller	constitute a genuine issue of material
background. The reporting party	and dispacth. The CAD printout clearly	fact precluding summary judgment;
indicated that he was dizzy and he	shows this was a 5150 call and	officer actions are judged as to all
would not answer questions about Andy	Gendreau testified he was given further	information known or relied upon, and
Tran's location, and kept repeating	information of Andy's prior mental	it remains undisputed that Dispatch
"send someone right now, send	health history. The CAD clearly states	relayed information that Andy was
someone right now. Take to hospital."	Andy needs to be taken to the hospital.	crazy, with weapons, and had
60. Karschamroon Decl., ¶ 6 Gendreau	Supporting Evidence: Exhibit C,	committed an assault. Further, the
Decl., ¶ 6; Exhibit 2, Transcript/Audio	Deposition of Gendreau, pp. 305: 5-25;	Plaintiffs citation to Officer Gendreau's
911 recording; Exhibit 3, Dispatch	Exhibit I, Gendreau GGPD Internal	deposition testimony does not support
CAD	Affairs Interview, pp. 17-18.60.	their assertion that he was aware of
		Andy's mental health history before
		arriving on scene, but rather only that
		he did not recall telling Internal Affairs

		that he acquired such knowledge. In
		any event, such knowledge would be
		immaterial in light of Andy's actual
		resistance while being detained, and the
		totality of the circumstances
		confronting the officers during that
		detention.
		Transcript/Audio 911 Recording;
		Exhibit 3, Dispatch CAD; Gendreau
		Depo., 305:5-25
61. Officers Karschamroon and	61. Disputed: Mark Zimmerman	61. The Plaintiff's citation to Mark
Gendreau arrived at approximately	testified he never saw Andy place any	Zimmerman's deposition does not
11:36 a.m., with Karschamroon first to	portion of his body in the window; in	support their assertion. Zimmerman
arrive. He noticed a male individual	fact he testified he began yelling as	testified that Andy stopped "directing
who appeared to be trying to break into	Andy taking off screen and Andy then	his attention towards opening the
or enter the residence through a	turned towards him at the same time	window and getting in the house" after
window, and broken screen nearby. As	Karschamroon arrived.	Officer Karschamroon ordered Andy to
Officer Karschamroon approached him,	Supporting Evidence: Exhibit A,	stop. In any event, this does not
his body halfway into the window and	Deposition of Mark Zimmerman, pp.	constitute a genuine issue of material
he appeared to be trying to grab	51: 9-22, 52: 1-24.	fact precluding summary judgment; it is

something from inside.		immaterial in light of Andy's actual
61. Karschamroon Decl., ¶ 7; Exhibit		resistance while being detained, and the
3, Dispatch CAD		totality of the circumstances
		confronting the officers during that
		detention.
		Zimmerman Depo., 50:1-19, 52:7-16
62. Officer Karschamroon was aware	62. Disputed: Officer Karschamroon	62 The Plaintiffs do not dispute Officer
through Dispatch the subject's name	testified he called Andy by his name	Karschamroon called Andy by name,
was Andy Tran, so he called out	Andy and he was uncertain if he	only the source of that information.
"Andy" three to four times to get his	learned Andy's name from hearing Mr.	Further, the cited deposition testimony
attention. Andy stopped, slowly turned	Zimmerman saying it or hearing	does not indicate how many times
around, and faced Officer	Andy's name from dispatch.	Officer Karschamroon called Andy's
Karschamroon. Andy was instructed to	Karschamroon testified Andy	name. The remainder of Defendants'
come down from the porch, which he	responded immediately and never	UMF remains unchallenged. In any
eventually did, approaching Officer	testified he yelled 3-4 times.	event, the Plaintiffs' evidence does not
Karschamroon with his hands at his	Supporting Evidence: Exhibit B,	constitute a genuine issue of material
sides.	Deposition of Daniel Karschamroon,	fact precluding summary judgment; it is
62. Karschamroon Decl., ¶¶ 8-10	pp. 245:15-25,246: 1-4.	immaterial in light of Andy's actual
		resistance while being detained, and the

		totality of the circumstances
		confronting the officers during that
		detention.
		Karschamroon Depo., 245:15-25,
		246:1-4
63. Officer Karschamroon could	63. Disputed: Karschamroon testified	63. Plaintiffs' evidence does not
Andy had a blank stare and appeared to	Andy had a confused, puzzled look on	constitute a genuine issue of material
be confused or unsure of what was	his face and appeared in need of	fact precluding summary judgment; it is
going on. Andy stopped his approach	medical help. Karschamroon testified	immaterial in light of Andy's actual
when he was approximately 20 feet	he told Andy to stop when he was 10-	resistance while being detained, and the
from the officer, who then asked Andy	15 feet away and put his hands on his	totality of the circumstances
to come closer. As Andy slowly	head and he complied. He never	confronting the officers during that
approached to within 10 feet of Officer	testified Andy ever stopped before	detention. In any event, the deposition
Karschamroon's location, he was	being told to do so and was told to	testimony of Officer Karschamroon
instructed to stop. Andy stopped, but	come closer.	cited by Plaintiffs is consistent with
maintained his blank expression.	Supporting Evidence: Exhibit B,	Defendants' UMF, namely, that Andy
63. Karschamroon Decl., ¶¶ 11, 12	Deposition of Daniel Karschamroon,	was instructed to stop either "10 feet"
	pp. 244: 15-25, 259: 1-7, 257: 15-22,	or "10-15 feet" from Officer
	276: 19-25, 279: 14-16; Exhibit J,	Karschamroon's location. The cited
	Karschamroon GGPD Internal Affairs	deposition testimony does not include a

	Interview, pp. 5-6.	question whether Andy stopped at any
		time prior to being so instructed, and
		would be an immaterial variance
		regardless
64. Andy was instructed to put his	64. Undisputed	64. Undisputed.
hands on top of his head and turn		
around, and he slowly complied with		
the directive. Officer Karschamroon		
then approached Andy and told him to		
interlock his fingers, which he did.		
Andy never spoke, but did appear to		
understand what was being said.		
64. Karschamroon Decl., $\P\P$ 13, 14		
65. Grabbing Andy's hands, Officer	65. Disputed: Neither the 911	65. Plaintiffs' evidence does not
Karschamroon sought to reassure him	Transcript nor the Dispatch CAD state	dispute that Officer Karschamroon
by saying "there's nothing wrong,"	anything about a "violent, mentally ill	attempted to calm and relax Andy, nor
"we're just here to help you," and to	male" trying to break into residence nor	the nature of the call received by
"calm down" and "relax." However, it	assaulting anyone. They both say this	Dispatch. Neither the 911 audio nor the
was important to get Andy secured and	was a 5150 call and Andy needs to be	CAD dispatch refer to "5150" as
handcuffed as the call indicated he was	taken to a hospital. The 911 caller	claimed by Plaintiffs, but do refer to
a violent mental individual with a	never said Andy had weapons, the	[Andy Tran] as being crazy, with

weapon.	dispatcher made a mistake. Given most	weapons, and having committed an
65. Karschamroon Decl., ¶¶ 14	of Karschamroon's Declaration is	assault. Although requests were made
	vastly different than his Internal Affairs	to take [Andy] to the hospital, that does
	Interview and Deposition Testimony	not constitute a genuine issue of
	anything he says he did is subject to	material fact precluding summary
	impeachment now for prior inconsitent	judgment; officer actions are judged as
	statements, thereby everything in his	to all information known or relied
	Declaration should be viewed with	upon.
	Suspicion.	Karschamroon Decl., $\P\P$ 1-5;
	Supporting Evidence: Defense	Gendreau Decl., $\P\P$ 1-5; Exhibit 2,
	Exhibit 2, Transcript/Audio 911;	Transcript/Audio 911 Recording;
	Defense Exhibit 3, Dispatch CAD.	Exhibit 3, Dispatch CAD.
66. As the first handcuff went on	66 Disputed: Officer Karschamroon	66. Plaintiffs argue semantics but do
Andy's right wrist, his hands	never told Internal Affairs Andy's	not dispute any material fact. Officer
immediately tensed up into fists.	hands ever balled into fists and he	Karschamroon testified at his
Officer Richard Gendreau arrived	testified repeatedly that Andy's hands	deposition that when a handcuff was
Officer Karschamroon was trying to	always remained interlocked after he	placed on Andy's right wrist, Andy
separate Andy's now-clenched fists.	was told to do so and he never saw	"tensed" and Officer Karschamroon
66. Karschamroon Decl., ¶ 15	Andy's hands ball into fists.	"could feel his fingers closing, kind of
	Karschamroon further testified he did	curling up from that interlocked

		•
	not know whether Andy's tension was a	position" and "close up as if the fingers
	result of his attempt to follow the last	were curling." Officer Karschamroon
	command given to interlock his fingers.	also stated in his deposition that Andy
	He also testified Andy was never	was "actively resisting" and that he
	aggressive.	"thought it might turn violent."
	Supporting Evidence: Exhibit J,	Karschamroon Depo., 321:22-322:22,
	Karschamroon GGPD Internal Affairs	362:12-17, 366:14-19
	Interview, pp. 7-8; Exhibit B,	
	Deposition of Daniel Karschamroon,	
	pp. 261: 12-18, 264: 17-20, 265: 13-18,	
	268: 9-10, 270: 10-11, 281: 9-25, 284:	
	1-25, 285: 1-6.	
67. Officer Gendreau noticed the	67. Disputed: Officer Gendreau said	67. Plaintiffs do not dispute any
struggle to get Andy's arms behind his	he walked fast and did not run. Officer	material fact, argue semantics, and
back, so he immediately ran over to	Karschamroon testified he never	mischaracterize testimony. Mark
assist. Officer Gendreau was told that	struggled with Andy is Gendreau's	Zimmerman confirmed that Officer
one handcuff was secured, but that	presence nor tried to force Andy's	Gendreau approached at "a pretty fast
Andy was not allowing himself to be	hands behind his back. Karschamroon	pace." Officer Gendreau testified that
cuffed. Officer Karschamroon had a	never said Andy would not allow self	Officer Karschamroon told him that
concern that the encounter might turn	to be handcuff and said he told	Andy was tensed up and that he

violent due to Andy's reaction when the first handcuff was placed on his wrist.

67. Karschamroon Decl., ¶¶ 16, 17;

Gendreau Decl., ¶¶ 7, 8

Gendreau Andy was complying but hands tensed when placed first handcuff on. Also
Karschamroon and Zimmerman disagree with most of what Gendreau said occured and both Gendreau and Karschamroon have now filed
Declarations which are filed with inconsistent statements from their Internal Affairs Interviews and Deposition Testimony their
Declarations should be viewed with suspicion.

Supporting Evidence: Exhibit C,
Deposition of Richard Gendreau, pp.
175: 1-25, 176: 1-25, 177: 1-5, 206:
19-25; Exhibit B, Deposition of Daniel
Karschamroon, pp. 285: 11-13;
Karschamroon GGPD Internal Affairs
Interview, pp. 9.

couldn't get Andy's hands behind his back into a handcuffing position. This is consistent with Officer Karschamroon's testimony that he told Gendreau that Andy was complying and tensed up after one handcuff was secured. Nothing in the cited testimony disputes that Andy continued to resist after Gendreau arrived. Further, Mark Zimmerman testified that Officer Gendreau did assist Officer Karschamroon by putting "his hands on Andy's hands or on the other officer's hands or in that vicinity" for "about 20 seconds" in what appeared to him as an effort to "keep more control" of Andy. Zimmerman Depo., 92:19-25, 93:16-19, 209:7-22; Gendreau Depo., 175:20-24; Karschamroon Depo., 285:11-14.

- 68. Andy continued to resist, failed to obey commands, and did not speak. Officer Gendreau could see that Andy's method of resistance was "complete rigidity"; both of his arms were up, his fists were balled, and he was shaking. Despite Officer Karschamroon's best efforts to pull Andy's arms down behind his back, his arms would not move.
- 68. Karschamroon Decl., ¶ 16
 Gendreau Decl., ¶ 9
- 68. **Disputed:** Officer Karschamroon had full control of Andy and there was never a struggle between the two. Officer Karschamroon testified he never struggled with Andy is Gendreau's presence nor tried to force Andy's hands behind his back. Karschamroon never said Andy would not allow self to be handcuff and said he told Gendreau Andy was complying but hands tensed when placed first handcuff on. Also given Karschamroon and Zimmennan disagree with most of what Gendreau said occured and both Gendreau and Karschamroon have now filed Declarations which are filed with inconsistent statements from their Internal Affairs Interviews and Deposition Testimony their Declarations should be viewed with
- 68. Plaintiffs' evidence does not dispute any material fact, and does not indicate that Officer Karschamroon had full control of Andy or that there was no resistance. Plaintiffs ignore Officer Karschamroon testimony that when a handcuff was placed on Andy's right wrist, Andy "tensed" and Officer Karschamroon "could feel his fingers closing, kind of curling up from that interlocked position" and "close up as if the fingers were curling." Officer Karschamroon also stated in his deposition that Andy was "actively resisting" by not allowing his arms to be pulled apart and providing tension to pull his arms together, and that he "thought it might turn violent." Nothing in Plaintiffs' cited testimony disputes that Andy continued to resist

	suspicion.	after Gendreau arrived. Further, Mark
	Supporting Evidence: Exhibit C,	Zimmerman testified that Officer
	Deposition of Richard Gendreau, pp.	Gendreau did assist Officer
	175: 1-25, 176: 1-25, 177: 1-5,206: 19-	Karschamroon by putting "his hands on
	25; Exhibit B, Deposition of Daniel	Andy's hands or on the other officer's
	Karschamroon, pp. 285: 11-13;	hands or in that vicinity" for "about 20
	Karschamroon GGPD Internal Affairs	seconds" in what appeared to him as an
	Interview, pp. 9	effort to "keep more control" of Andy.
		Karschamroon Depo., 321:22-322:22,
		280:12-23, 362:12-17, 366:14-19,
		Zimmerman Depo., 92:19-25, 93:16-
		19, 209:7-22
69. To prevent a possible escape,	69. Disputed: Officer Karschamroon	69. Plaintiffs do not dispute any
Officer Gendreau moved in front of	testified he was a foot from Andy and	material fact precluding summary
Andy. From that position, he could see	1-3 feet from Gendreau and He never	judgment. The assertion that Andy did
that Andy was shaking and he began to	heard Andy growl or see his foaming at	not try to escape does dispute Officer
growl. Andy was not blinking, his	the mouth, or see Andy shaking other	Gendreau's motivation for positioning
pupils appeared to be dilated, and he	than when Karschamroon shook Andy	himself in front of Andy. Further,
had saliva coming from the corner of	hands, which moved, to let Andy know	Officer Karschamroon was positioned
his mouth, almost as though he was	he was still behind him. Gendreau	behind Andy, and was not in a position

foaming at the mouth. Officer	testified he never feared Andy would	to see Andy's face at the time he was
Gendreau felt like Andy was looking	flee or run. Karschamroon testified	tased. As to the issue of Andy
straight through him.	Andy never made a movement	growling, Mark Zimmerman testified
69. Karschamroon Decl., ¶ 16	consisting with fleeing or running away	that although he never saw Andy's lips
Gendreau Decl., ¶¶ 10, 11	Supporting Evidence: Exhibit B,	moving, he heard some audible things
	Deposition of Daniel Karschamroon,	coming out of his mouth. Zimmerman
	pp. 261: 12-18, 264: 17-20, 284: 1-25,	also testified that he could see subtle
	285: 1-6, 330: 11-15; Declaration of	movement going on between the
	Daniel Karschamroon, pp. 384: 18,	officers and Andy and that there could
	385: 1-5; Exhibit C, Deposition of	have been a "whole 'nother [sic] set of
	Richard Gendreau, pp. 174: 14-17;	scenarios going on" that he did not see.
	176: 1-25, 177: 1-10,182: 2-23,187: 1-	Karschamroon Depo., 348:9-15,
	8,220: 1-24, 225: 17-24, 266: 1-10.	355:16-19, Zimmerman Depo., 217:3-
		9, 222:11-223:13, 276:22-25
70. In a casual manner, Officer	70. Disputed: Officer Karschamroon	70. Plaintiffs do not dispute
Gendreau said words to the effect of,	testified the only thing he heard	Defendants' UMF that the officers
"Hey, dude, just calm down," and	Gendreau say was "Hey, dude, calm	attempted to relax and calm Andy while
advised Andy to relax, put his hands	down." Gendreau never ackowledged	attempting to secure him, but rather
behind his back, and that "we're not	he said "dude calm down".	dispute the exact words spoken. This
here to hurt you." Officer	Karschamrron testified Gendreau never	does not create a genuine issue of

Karschamroon was reminding Andy to	told Andy to put his hands behind his	material fact precluding summary
relax as well, but he was also shaking	back and the only shaking he saw from	judgment. Further, it is immaterial that
Andy's still clenched hands to let him	Andy was Karschamroon shaking	Officer Karschamroon may not have
know he still needed to be handcuffed.	Andy to let him know he was there.	said anything to Andy about being
70. Karschamroon Decl., $\P\P$ 19, 20;	Karschamroon testifed he never said	handcuffed since the act of attempting
Gendreau Decl., $\P\P$ 12, 13	anything to Andy about being	to handcuff him established the
	handcuffed.	officer's intention. Officer
	Supporting Evidence: Exhibit B,	Karschamroon's deposition testimony
	Deposition of Daniel Karschamroon,	that Andy was not allowing his arms to
	pp. 282, 345: 1-18, 268: 19-23, 269: 1-	be pulled apart and was providing
	4; 419, Exhibit B, Deposition of Daniel	tension to pull his arms together
	Karschamroon, pp. 328: 1-7,330: 11-	demonstrates resistance to that
	15/17-25, 337: 10-16, 340: 8-9, 341: 7-	intention.
	16.	Karschamroon Depo., 321:22-322:22,
		280:12-23, 362:12-17, 366:14-19
71. Andy continued to ignore the	71. Disputed: Gendreau said he did	71. Plaintiffs do not dispute any
officers' orders, and concern grew that	not believe Andy understood anything	material fact precluding summary
the dangling handcuff could be used as	he said so how can he claim Andy	judgment and mischaracterize
a weapon if Andy decided to swing his	ignored an order? Further,	testimony. Officer Karschamroon did
arm. Both officers then attempted to	Karschamroon testified that neither	not testify that "relax" and "calm

pry Andy's arms down but could not overcome his flexed/locked position. A pain compliance technique performed by Officer Gendreau did nothing.

71. Karschamroon Decl., $\P\P$ 21, 22; Gendreau Decl., $\P\P$ 12, 14-16

"relax" or "dude calm down" were lawful orders. Both Karshamroon and Zimmennan said Gendreau never struggled with Andy except to taser him. Karschamroon testified repeatedly he never saw Gendreau touch Andy and did not struggle either alone or with Gendreau to get Andy's ann behind his back.

Karschamroon testified he always had ahold of the loose handcuff so it could not be dangling and used as a weapon. Again, given the many new statements which are completely inconsitent with statements made to Internal Affairs and during Deposition testimony puts the credibilty of Karschamroon and Gendreau is great doubt and their Declarations should be viewed with extreme caution.

down" were not lawful orders. Although he did testify he had not received training that such commands were lawful orders, he stated that the commands given were appropriate given the goal of relaxing Andy. Officer Karschamroon also stated in his deposition that Andy was "actively resisting" by not allowing his arms to be pulled apart and providing tension to pull his arms together, and that he "thought it might turn violent." Nothing in Plaintiffs' cited testimony disputes that Andy continued to resist after Gendreau arrived. Further, Mark Zimmerman testified that Officer Gendreau did assist Officer Karschamroon by putting "his hands on Andy's hands or on the other officer's

hands or in that vicinity" for "about 20

Supporting Evidence: Exhibit B,
Deposition of Daniel Karschamroon,
pp. 273: 8-11, 274, 292: 17-23, 293: 1,
331: 16-25, 332: 18-21, 333: 7-11;
Karschamroon GGPD Internal Affairs
Interview, pp. 7-8.; Exhibit A,
Deposition of Mark Zimmerman, pp.
79:11-20,80: 10-16, 81: 4-5, 83: 1825,85:1-10,87: 3-7/16-23,97: 5-6, 100:
1-25, 102: 4-9/20-24,150: 20-25, 151:
9-11, 197:20-25,198: 1-5,209:2325,222:17-25,224: 6-12, 276: 1020,277: 1-4, 278: 18-21.

seconds" in what appeared to him as an effort to "keep more control" of Andy. Nothing in Zimmerman's testimony disputes the officers' account of Andy's resistance other than his own speculation. Zimmerman testified that he could see subtle movement going on between the officers and Andy and that there could have been a "whole 'nother [sic] set of scenarios going on" that he did not see. He could not hear what was being said, and although his eyesight is admittedly impaired, he never wears his prescription contact lens. Zimmerman observed the incident from a distance of approximately 40-50 feet could not tell what small, detailed movements were occurring. He does not know whether the officers tried to move Andy's hands

		from the top of his head, and admits
		that many things could have been said
		or done which he could not observe or
		hear. While Zimmerman testified that
		Andy's hands were on his head at all
		times, he cannot say whether there was
		any kind of struggle
		Karschamroon Depo., 321:22-322:22,
		280:12-23, 283:20-284:20, 362:12-17,
		366:14-19, Zimmerman Depo., 22:3-7,
		82:11-18, 92:19-25, 93:16-19, 96:2-10,
		100:7-20, 162:11-19, 187:3-11,
		200:11-24, 201:6-12, 209:7-22, 217:3-
		9, 222:11-223:13, 276:22-25, 287:25-
		288:12.
72. Officer Gendreau thought that if	72. Disputed: Karschamroon and	72. Plaintiffs' evidence does not
a fight ensued, it was going to be a bad	Zimmerman both testified Gendreau	dispute any material fact. Plaintiffs
one given the strength that Andy had	never struggled to force Andy's hands	ignore Officer Karschamroon's
exhibited when resisting both officers	behind back. Karschamroon said	testimony that when a handcuff was
attempt to lower his arms. Officer	Gendreau never touched Andy.	placed on Andy's right wrist, Andy

Karschamroon was similarly concerned about officer safety.

72. Karschamroon Decl., ¶ 21; Gendreau Decl., ¶ 19 Karschamroon testified when he shook
Andy's hands they moved so the
extraordinary strength Gendreau said
Andy had is disputed by
Karschamroon.

Supporting Evidence: Exhibit B,
Deposition of Daniel Karschamroon,
pp.273: 8-11,274, 292: 17-23, 293: 1,
331: 16-25, 332: 18-21, 333: 7-11;
Karschamroon GGPD Internal Affairs
Interview, pp. 7-8.; Exhibit A,
Deposition of Mark Zimmerman,
pp.79: 11-20, 80: 10-16, 81:4-5, 83:
18-25, 85: 1-10, 87: 3-7/16-23, 97: 5-6,
100: 1-25, 102: 4-9/20-24, 150: 20-25,
151: 9-11, 197:20-25, 198: 1-5, 209
:23-25, 222: 17-25, 224: 6-12, 276: 1020, 277: 1-4, 278: 18-21.

"tensed" and Officer Karschamroon "could feel his fingers closing, kind of curling up from that interlocked position" and "close up as if the fingers were curling." Officer Karschamroon also stated in his deposition that Andy was "actively resisting" by not allowing his arms to be pulled apart and providing tension to pull his arms together, and that he "thought it might turn violent." Nothing in Plaintiffs' cited testimony disputes that Andy continued to resist after Gendreau arrived. Further, Mark Zimmerman testified that Officer Gendreau did assist Officer Karschamroon by putting "his hands on Andy's hands or on the other officer's hands or in that vicinity" for "about 20 seconds" in what appeared to him as an effort to "keep

		more control" of Andy. Nothing in
		Zimmerman's testimony disputes the
		officers' account of Andy's resistance
		other than his own speculation.
		Karschamroon Depo., 321:22-322:22,
		280:12-23, 362:12-17, 366:14-19,
		Zimmerman Depo., 22:3-7, 82:11-18,
		92:19-25, 93:16-19, 96:2-10, 100:7-20,
		162:11-19, 187:3-11, 200:11-24,
		201:6-12, 209:7-22, 217:3-9, 222:11-
		223:13, 276:22-25, 287:25-288:12.
73. As Andy continued to resist officer	73. Disputed: Karschamroon testified	73. Plaintiffs do not dispute any
commands by remaining rigid and non-	after he told Andy to interlock his	material fact precluding summary
responsive, Officer Gendreau decided to	fingers Andy was only told to relax or	judgment and mischaracterize
take out his Taser. Andy was informed	"dude calm down" which	testimony. Officer Karschamroon
several times that if he did not comply,	Karschamroon testified were not lawful	testified that Officer Gendreau did warn
he would be tased. Andy continued to	orders. Gendreau testified he did pot	Andy that he would be tased if he did
resist, so Officer Gendreau deployed his	believe Andy understood anything he	not calm down, and Zimmerman
taser once in Andy's thigh for a cycle of	said so it would be difficult for him to	testified that Officer Gendreau had his
five seconds.	"resist" non lawful "commands".	hands on top of Andy's hands for about

73. Karschamroon Decl., $\P\P$ 22-25;	Karschamroon testified Gendreau told	20 seconds before stepping to the side
Gendreau Decl., ¶¶ 20-23	him "Danny I'm just going to Tase	to taser him.
	him" and Karschamroom testified	Karschamroon Depo., 331:6-12,
	Gendreau never told Andy he was	Zimmerman Depo., 208:8-209:17
	going to be tasered. Zimmerman said	
	Gendreau stepped to Andy's side and	
	immediatly tasered him.	
	Supporting Evidence: Exhibit A,	
	Deposition of Mark Zimmerman, pp.	
	108: 1-11/18-24, 110: 1-13/22-25, 111:	
	10-17/18-22, 112: 25, 121: 6-11/15-24,	
	123: 15-25, 240: 21-25, 242: 13-25,	
	243: 11-16, 244: 12-15, 246: 7-19;	
	Exhibit B, Deposition of Daniel	
	Karschamroon, pp. 397: 7-8; Exhibit D,	
	Deposition of Richard Fukumoto,	
	M.D., pp. 90: 13-16, 258: 16-19, 259:	
	2-23, 260: 1-10, 261: 13-15, 264: 21-	
	24, 266: 13-22, 268:6-22, 280: 19-25,	
	281: 10-25, 282: 7-15, 283: 4-16/21-	

	23; Exhibit E, Deposition of Bua Thi	
	Phan, pp. 243.1: 16-18; 256.1: 2-5.	
74. Prior to deploying the taser,	74. Disputed: GGPD General Order	74. Plaintiffs do not dispute any
Officer Gendreau also attempted to	5.31 states the IVS Unit must be	material fact precluding summary
activate his audio recording system and	activated when a detention was going	judgment. The General Orders are
the one in his police unit, although he	to occur. Gendreau testified he saw	simply "guidelines," and the purpose of
was too far away for remote avtivation.	Karschamroon detaining Andy when he	the In-Car Video System (IVS) is to
Based on the nature of the call and	arrived yet failed to activate his IVS	provide an accurate, unbiased
rapidly evolving events, activating a	Unit; Karschamroon testified he	audiovisual record of enforcement
recorder or his in-unit video during this	thought IVS Unit activation was	related and non-criminal incidents that
incident was "not at the forefront" of	completely within his discretion. No	will enhance criminal prosecutions and
Officer Karschamroon's thoughts.	where in the GGPD General Orders	limit civil liabilities. The policy is non-
74. Karschamroon Decl., ¶ 41;	does it indicate "rapidly evolving	punitive in nature, and no disciplinary action
Gendreau Decl., ¶ 20	events" warrant ignoring orders. The	for violations of this policy will be proposed
	fact Gendreau claims to have attempted	unless the employee refuses either actively or
	to activate his IVS Unit shows he had	passively, as demonstrated by repeated
	time and should have called for a	instances of his/her failure. Summoning Fire
	supervisor and medics before tasering	Department Paramedics before the use of a
	Andy as required by	Taser is only recommended, if practical, under
	GGPD General Order 2.25. Further,	the circumstances.

	given the major credibility issues of all	General Order 2.24, 5.31, General Order,
	involved officers Plaintiffs do not	"Statement by the Chief of Police"
	believe the Court should not accept the	
	IVS recordings were destroyed. GGPD	
	General Order 5.31 states if IVS fails to	
	activate a work order must be	
	completed and Gendreau never did the	
	required paperwwork.	
	Supporting Evidence: Exhibit C,	
	Deposition of Richard Gendreau, pp.	
	97-98, 109: 20-23; Exhibit H, GGPD	
	General Order 2.24, 5.31.	
75. Officer Gendreau was trained that	75. Disputed: Gendreau testified he	75. Plaintiff's evidence does not
one of the best ways to get a subject on	believed that Andy was under the	constitute a genuine issue of material
the ground is to tase them in the leg.	influence of a Central Nervous System	fact precluding summary judgment; it is
His goal was to take Andy into custody	stimulant before he tasered Andy and	immaterial in light of Andy's actual
without any further risk of injury to	knew and had been trained that tasering	resistance while being detained, and the
Andy, Officer Karschamroon or	Andy could cause his immediate death.	totality of the circumstances
himself.	Given theses facts it is difficult to	confronting the officers during that

75. Gendreau Decl., ¶ 22

believe Gendreau did not believe to injure Andy. Further, GGPD General Orders state a medic and supervisor should be called prior to tasering a subject. Gendreau testified he tried to activate his IVS and Lux testified it would have take 1-3 seconds to call for a medic and supervisor. Gendreau said Andy was not resisting, being aggressive or looking like would flee when he wass tasered so there was no rush to taser Andy. Andy was therefore a non comabative subject per GGPD General Order 2.6 and Lux testified he trained his students including Gendreau not taser such subjects.

Karschamroon testified he saw no reason to take out any weapons against Andy and had no idea why Gendreau was tasering Andy. Lux testified detention. Officer Karschamroon testified that he did not feel it was necessary to take out any weapon only up to the point of placing the first handcuff on Andy's wrist. Officer Gendreau testified that Andy's conduct and appearance was indicative of someone who potentially is going to throw a punch. Plaintiffs' misrepresent the testimony of Benedict Lux, which was based on incomplete hypothetical questioning and not on facts relevant to this case.

Karschamroon Depo., 251:21-252:6, Gendreau Depo., 178:5-16.

Karshamroon as the first officer on scene should have detennined why Gendreau was going to taser Andy. Supporting Evidence: Exhibit B, Deposition of Daniel Karschamroon, pp. 251: 17-25, 252: 1-118, 355: 21-24, 357: 3-18, 360: 1-6; Exhibit C, Deposition of Richard Gendreau, pp. 96: 1-16,174: 14-17; 176: 1-25, 177: 1-10, 182: 2-23, 187: 1-8, 220: 1-24, 225: 17-24, 266: 1-10, 327: 17-22, 328: 1-14/20-25, 329: 1-18; Exhibit F, Deposition of Benedict Lux, pp. 176: 15-22,177:7-20,178:5-14,179: 5-12, 204: 1-25, 205: 1-15, 206: 9-22, 209: 1-25, 210: 8-18, 211: 9-11, 212: 13-18, 244: 14-25, 247: 21-25, 252: 21-25, pp. 253: 1-3/5-12, 254, 255: 1-5/12-15; Exhibit H, GGPD General Order 2.24, 2.6; Exhibit J, Karschamroon GGPD

	Internal Affairs Interview, pp. 15.	
76. Once Andy was tased, he began	76. Disputed: Zimmerman testified	76 Plaintiff's evidence does not
to fall backward toward Officer	Andy fell hard to the ground after the	constitute a genuine issue of material
Karschamroon, who caught him and	tasering like a "sack of potatoes" and	fact precluding summary judgment; it is
laid him forward onto the ground.	saw nothing consistent with Andy	immaterial in light of Andy's actual
Andy also released his grip, and once	being gently placed on the ground.	resistance while being detained, and the
the taser cycle stopped, the officers	Zimmeman testified Andy was a fat	totality of the circumstances
were able to bring his left arm behind	guy and the officers could not have	confronting the officers during that
his back and apply the other handcuff to	placed him gently down if they wanted.	detention. Zimmerman has had no
secure his arms.	Zimmerman testified when Andy hit	medical training. Although his eyesight
76. Karschamroon Decl., ¶ 26;	the ground was dead and never moved	is admittedly impaired, he never wears
Gendreau Decl., $\P\P$ 24, 25	again on his own.	his prescription contact lens.
	Supporting Evidence: Exhibit A,	Zimmerman observed the incident from
	Deposition of Mark Zimmerman, pp.	a distance of approximately 40-50 feet
	108: 1-11/18-24, 110: 1-13, 240: 21-	and could not tell what small, detailed
	25, 242: 13-25,243: 11-16.	movements were occurring.
		Zimmerman testified that it was
		possible that Andy was breathing after
		being tased and that he just did not

		observe it, and that his belief that Andy
		was dead is not based on any actual
		evidence
		Zimmerman Depo., pp. 22:3-7, 162:11-
		19, 180:20-21; 201:6-12, 293:23-
		294:12
77. At approximately 11:38 a.m.,	77. Disputed: GG Fire Department	77. Plaintiff's evidence does not
Officer Gendreau advised over his	paramedics were not dispached until	constitute a genuine issue of material
police radio that the situation was	11:39:38. Per Lux and GGPD General	fact precluding summary judgment; it
stable, but that Andy had been tased and	Order 2.24 states medics should be	remains undisputed that GG Fire
he requested Garden Grove Fire	called before any tasering and a	Department paramedics were promptly
Department to respond to examine	supervisor must be called before a	dispatched after Andy was tased.
Andy per their protocol when a subject	tasering. Sergeant Wagner was not	General Orders are guidelines and not
is tased. At approximately 11:39 a.m.,	requested until 11:46.	an independent mechanism to pursue
Garden Grove Fire Department was	Supporting Evidence: Exhibit D,	civil liability.
dispatched to the incident scene in	Deposition of Richard Fukumoto,	General Orders, "Statement by the
reference to Andy being tased.	M.D., pp. 90: 13-16, 282: 7-15, 283:4-	Police Chief"
77. Karschamroon Decl., ¶ 27;	16/21-23; Exhibit F, Deposition of	
Gendreau Decl., ¶ 26; Exhibit 3	Benedict Lux, pp. 249: 15-25, 250: 9-	
Dispatch CAD	10, 260: 13-25, 262: 15-25, 263: 1-3;	

	Exhibit H, GGPD General Order 2.24;	
	Exhibit K., Sergeant Wagner's report.	
78. As he was handcuffed and on the	78. Disputed: Zimmerman testified	78. Plaintiff's evidence does not
ground, Andy looked in various	Andy fell hard to the ground after the	constitute a genuine issue of material
directions. Officer Gendreau continued	tasering like a "sack of potatoes" and	fact precluding summary judgment; it is
to instruct him to relax, and informed	saw nothing consistent with Andy	immaterial in light of the undisputed
him they were in the process of getting	being gently placed on the ground.	fact that GG Fire Department
him medical attention. When asked if	Zimmeman testified Andy was a fat	Paramedics were promptly summoned.
he was doing okay, Andy remained	guy and the officers could not have	In any event, Zimmerman has had no
unresponsive but continued to look	placed him gently down if they wanted.	medical training, and although his
around.	Zimmerman testified when Andy hit	eyesight is admittedly impaired, he
78. Karschamroon Decl., ¶ 30;	the ground was dead and never moved	never wears his prescription contact
Genreau Decl., ¶ 27	again on his own. Karschamroon	lens. Zimmerman observed the
	testifed Gendreau opened up Andy's	incident from a distance of
	eyes and Karschamroon could not tell	approximately 40-50 feet and could not
	if Andy was breathing. Zimmerman	tell what small, detailed movements
	said he saw Gendreau slapping Andy's	were occurring. Zimmerman testified
	face and saying "to stop faking". Bua	that it was possible that Andy was
	Phan also testified Andy died	breathing after being tased and that he
	immediately after the tasering. Dr.	just did not observe it, and that his

	Fukumoto testified the evidence is	belief that Andy was dead is not based
		·
	consistent with Andy being dead	on any actual evidence. Dr. Fukumoto
	immediately after he saw tasered.	testified that he has no way of knowing
	Supporting Evidence: Exhibit A,	when Andy died and that he relies on
	Deposition of Mark Zimmerman, pp.	the physician's death pronouncement as
	108: 1-11/18-24, 110: 1-13/22-25, 111:	to the time of death.
	10-17/18-22, 112: 25, 121: 6-11/15-	Zimmerman Depo., 22:3-7, 162:11-19,
	24,123: 15,- 25, 240: 21-25, 242: 13-	180:20-21; 201:6-12, 293:23-294:12;
	25, 243: 11-16,244: 12-15,246: 7-19;	Fukumoto Depo., 187:19-188:5,
	Exhibit B, Deposition of Daniel	258:7-259:25
	Karschamroon, pp. 397: 7-8; Exhibit D,	
	Deposition of Richard Fukumoto,	
	M.D., pp. 90: 13-16, 258: 16-19, 259:2-	
	23, 260: 1-10, 261: 13-15, 264: 21-24,	
	266: 13-22, 268:6-22, 280: 19-25, 281:	
	10-25, 282: 7-15, 283: 4-16/21-23;	
	Exhibit E, Deposition of Bua Thi Phan,	
	pp. 243.1: 16-18; 256.1: 2-5.	
79. After the tasing, a third officer	79. Disputed: Zimmerman testified	79. Plaintiff's evidence does not
arrived on scene, Officer Amir El-Farra.	Andy fell hard to the ground after the	constitute a genuine issue of material

The officers decided to roll Andy over on his back to observe him from the front. His eyes were closed, but a check by Officer Gendreau found they were dilated. Because of that and Andy's labored breathing, the officers decided to sit him up against Officer El-Farra's leg, thinking it might help with his breathing and help snap him out of the trance he appeared to be in.

79. Karschamroon Decl., $\P\P$ 29-34; Gendreau Decl., $\P\P$ 31-32; El-Farra Decl., $\P\P$ 6-8 tasering like a "sack of potatoes" and saw, nothing consistent with Andy being gently placed on the ground. Zimmeman testified Andy was a fat guy and the officers could not have placed him gently down if they wanted. Zimmerman testified when Andy hit the ground was dead and never moved again on his own. Zimmerman testified when the police rolled Andy against an officers legs he could clearly see Andy chest and stomach and he was clearly not breathing. Karschamroon testifed Gendreau opened up Andy's eyes and Karschamroon could not tell if Andy was breathing. Zimmerman said he saw Gendreau slapping Andy's face and saying "to stop faking". Bua Phan also testified Andy died immediately after the tasering.

fact precluding summary judgment; it is immaterial in light of the undisputed fact that GG Fire Department Paramedics were promptly summoned. In any event, Zimmerman has had no medical training, and although his eyesight is admittedly impaired, he never wears his prescription contact lens. Zimmerman observed the incident from a distance of approximately 40-50 feet and could not tell what small, detailed movements were occurring. Zimmerman testified that it was possible that Andy was breathing after being tased and that he just did not observe it, and that his belief that Andy was dead is not based on any actual evidence. Dr. Fukumoto testified that he has no way of knowing when Andy died and that he relies on

	Dr. Fukumoto testified the evidence is	the physician's death pronouncement as
	consistent with Andy being dead	to the time of death.
	immediately after he saw tasered.	Zimmerman Depo., 22:3-7, 162:11-19,
	Supporting Evidence: Exhibit A,	180:20-21; 201:6-12, 293:23-294:12;
	Deposition of Mark Zimmennan, pp.	Fukumoto Depo., 187:19-188:5,
	108: 1-11/18-24, 110: 1-13/22-25, 111:	258:7-259:25
	10-17/18-22,112: 25, 121: 6-11/15-24,	
	123: 15-25; 240: 21-25; 242: 13-25,	
	243: 11-16, 244: 12-15, 246: 7-19;	
	Exhibit B, Deposition of Daniel	
	Karschamroon, pp. 397: 7-8; Exhibit D,	
	Deposition of Richard Fukumoto,	
	M.D., pp. 90: 13-16, 258: 16-19, 259:	
	2-23, 260: 1-10, 261: 13-15, 264: 21-	
	24,266: 13-22, 268:6-22, 280: 19-25,	
	281: 10-25, 282: 7-15, 283: 4-16/21-	
	23; Exhibit E, Deposition of Bua Thi	
	Phan, pp. 243.1: 16-18; 256.1: 2-5.	
80. Given Andy's dilated pupils in	80. Disputed: Gendreau testified he	80. Plaintiff's evidence does not
bright sunlight and his rapid pulse,	believed that Andy was under the	constitute a genuine issue of material

Officer Gendreau did consider that he may be under the influence of a controlled substance, but he never had the opportunity to do a full evaluation.

80. Gendreau Decl., ¶ 37

influence of a Central Nervous System stimulant before he tasered Andy and knew and had been trained that tasering Andy could cause his immediate death. Given theses facts it is difficult to believe Gendreau did not believe to injure Andy. Further, GGPD General Orders state a medic and supervisor should be called prior to tasering a subject. Gendreau testified he tried to activate his IVS and Lux testified it would have take 1-3 seconds to call for a medic and supervisor. Gendreau said Andy was not resisting, being aggressive or looking like would flee when he wass tasered so there was no rush to taser Andy. Andy was therefore a non comabative subject per GGPD General Order 2.6 and Lux testified he trained his students including Gendreau

fact precluding summary judgment; it is immaterial in light of Andy's actual resistance while being detained, and the totality of the circumstances confronting the officers during that detention. Officer Karschamroon testified that he did not feel it was necessary to take out any weapon only up to the point of placing the first handcuff on Andy's wrist. Officer Gendreau testified that Andy's conduct and appearance was indicative of someone who potentially is going to throw a punch. Plaintiffs' misrepresent the testimony of Benedict Lux, which was based on incomplete hypothetical questioning and not on facts relevant to this case.

Karschamroon Depo., 251:21-252:6, Gendreau Depo., 178:5-16. not taser such subjects. Karschamroon testified he saw no reason to take out any weapons against Andy and had no idea why Gendreau was tasering Andy. Lux testified Karshamroon as the first officer on scene should have detennined why Gendreau was going to taser Andy. Supporting Evidence: Exhibit B, Deposition of Daniel Karschamroon, pp. 251: 17-25, 252: 1-118, 355: 21-24, 357: 3-18, 360: 1-6; Exhibit C, Deposition of Richard Gendreau, pp. 96: 1-16,174: 14-17; 176: 1-25, 177: 1-10, 182: 2-23, 187: 1-8, 220: 1-24, 225: 17-24, 266: 1-10, 327: 17-22, 328: 1-14/20-25, 329: 1-18; Exhibit F, Deposition of Benedict Lux, pp. 176: 15-22,177:7-20,178:5-14,179: 5-12, 204: 1-25, 205: 1-15, 206: 9-22, 209:

	1-25, 210: 8-18, 211: 9-11, 212: 13-18,	
	244: 14-25, 247: 21-25, 252: 21-25, pp.	
	253: 1-3/5-12, 254, 255: 1-5/12-15;	
	Exhibit H, GGPD General Order 2.24,	
	2.6; Exhibit J, Karschamroon GGPD	
	Internal Affairs Interview, pp. 15.	
81. As Andy was seated upright and	81. Disputed: Zimmerman testified	81. Plaintiff's evidence does not
leaning against Officer El-Farra's leg,	Andy fell hard to the ground after the	constitute a genuine issue of material
his breathing was observed to be	tasering like a "sack of potatoes" and	fact precluding summary judgment; it is
labored but no officer believed the	saw, nothing consistent with Andy	immaterial in light of the undisputed
situation to be critical. Officer	being gently placed on the ground.	fact that GG Fire Department
Karschamroon saw nothing to suggest a	Zimmerman testified Andy was a fat	Paramedics were promptly summoned.
life-threatening situation, Officer	guy and the officers could not have	In any event, Zimmerman has had no
Gendreau "felt comfortable" upon	placed him gently down if they wanted.	medical training, and although his
hearing the approach of the medics, and	Zimmerman testified when Andy hit	eyesight is admittedly impaired, he
Officer El-Farra could see Andy's chest	the ground was dead and never moved	never wears his prescription contact
rising and falling.	again on his own. Zimmerman testified	lens. Zimmerman observed the
81. Karschamroon Decl., ¶ 35;	when the police rolled Andy against an	incident from a distance of
Gendreau Decl., ¶¶ 33-34; El-Farra	officers legs he could clearly see Andy	approximately 40-50 feet and could not
Decl., ¶¶10	chest and stomach and he was clearly	tell what small, detailed movements

not breathing. Karschamroon testifed Gendreau opened up Andy's eyes and Karschamroon could not tell if Andy was breathing. Zimmerman said he saw Gendreau slapping Andy's face and saying "to stop faking". Bua Phan also testified Andy died immediately after the tasering.

Dr. Fukumoto testified the evidence is consistent with Andy being dead immediately after he saw tasered.

Dr. Fukumoto also testified that if officers did see labored or heavy breathing they should have known

Andy was in cardiad distress and taken off the handcuffs at a minimum.

Supporting Evidence: Exhibit A,
Deposition of Mark Zimmerman,
pp.108: 1-11/18-24, 110: 1-13/22-25,

111: 10- 17/18-22, 112: 25, 121: 6-

were occurring. Zimmerman testified that it was possible that Andy was breathing after being tased and that he just did not observe it, and that his belief that Andy was dead is not based on any actual evidence. Dr. Fukumoto testified that he has no way of knowing when Andy died and that he relies on the physician's death pronouncement as to the time of death.

Zimmerman Depo., 22:3-7, 162:11-19, 180:20-21; 201:6-12, 293:23-294:12; Fukumoto Depo., 187:19-188:5, 258:7-259:25

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	11/15-24, 123: 15-25, 240: 21-25, 242:	
	13-25, 243: 11-16, 244: 12-15, 246: 7-	
	19; Exhibit B, Deposition of Daniel	
	Karschamroon, pp. 397: 7-8; Exhibit D,	
	Deposition of Richard Fukumoto,	
	M.D., pp. 90: 13-16, 258: 16-19, 259:	
	2-23, 260: 1-10, 261: 13-15, 264: 21-	
	24, 266: 13-22, 268:6-22, 280: 19-25,	
	281: 10-25, 282: 7-15, 283: 4-16/21-	
	23; Exhibit E, Deposition of Bua Thi	
	Phan, pp. 243.1: 16-18; 256.1: 2-5.	
82. Officer Gendreau asked Officer	82. Zimmerman testified all police	82 Plaintiff's evidence does not
El-Farra to stay with Andy as he and	officers arrived outside until the	constitute a genuine issue of material
Officer Karschamroon ascertained the	paramedics arrived looking	fact precluding summary judgment; it is
welfare or condition of the calling party	increasingly more concerned because	immaterial in light of the undisputed
or family considering the nature of the	Andy was not moving. Per Exhibit 3	fact that GG Fire Department
call and the need to determine if anyone	of Defendants Motion El-Farra was on	Paramedics were promptly summoned.
had been injured or attacked by Andy.	scene at 11:38 and Paramedics did not	In any event, Zimmerman "thinks"
Officer El-Farra estimates that he was	arrive until 11:44 so El-Farra was on	Officers Karschamroon and Gendreau
in front of the residence, with Andy, for	scene for several minutes prior to the	remained with Andy until the

approximately 15 to 20 seconds	paramedics arrival.	paramedics arrived but concedes he lost
thereafter prior to medics arriving.	Supporting Evidence: Exhibit A,	track of them.
82. Karschamroon Decl., $\P\P$ 35-36;	Deposition of Mark Zimmerman, pp.	Zimmerman Depo., 264:18-23, 267:12-
Gendreau Decl., ¶ 33-34; El-Farra	123: 15-25,246: 7-19, 251: 4, 264: 18-	14, 307:21-25
Decl., ¶ 11-12	25,265: 5-14118-25,267: 6-8.; Defense	
	Exhibit 3, Dispatch CAD.	
83. Officers Gendreau and	83. Disputed: Zimmerman testified all	83. Plaintiff's evidence does not
Karschamroon then contacted Andy's	police officers arrived outside until the	constitute a genuine issue of material
family inside the residence, but it	paramedics arrived looking	fact precluding summary judgment; it is
appeared the only individual who	increasingly more concerned because	immaterial in light of the undisputed
sustained an injury was Plaintiff Bua	Andy was not moving. Per Exhibit 3 of	fact that GG Fire Department
Thi Phan, who had sustained a scraped	Defedants Motion EI-Farra was on	Paramedics were promptly summoned.
elbow. Her injury was measured and	scene at 11:38 and Paramedics did not	In any event, Zimmerman "thinks"
photographed.	arrive until 11:44 so EI-Farra was on	Officers Karschamroon and Gendreau
83. Karschamroon Decl., ¶¶37-38;	scene for minutes prior to the	remained with Andy until the
Gendreau Decl., ¶ 35; Exhibit 4,	paramedics arrival. There has been no	paramedics arrived but concedes he lost
Photograph of Injury; Exhibit 5,	testimony by Karschamroon or	track of them. Further, Plaintiffs do not
Photograph of Screen	Gendreau that they ever personally	deny that Bua Thi Phan was injured in a
	observed any injury nor photographed	struggle with Andy.
	any injury to Bua Phan so there is a	

	complete lack of foundation for this	Zimmerman Depo., 264:18-23, 267:12-
	"new" testimony. Again, another	14, 307:21-25
	example of recreating history by	
	Karschamroon and Gendreau and	
	another reason to disbelieve both of	
	their Declarations. Further, the attached	
	photographs were submitted late and	
	beyond the Motion Cut-Off time.	
	Supporting Evidence: Exhibit A,	
	Deposition of Mark Zimmerman, pp.	
	123: 15-25,246: 7-19, 251: 4,264: 18-	
	25,265: 5-14/18-25,267: 6-8.; Defense	
	Exhibit 3, Dispatch CAD.	
84. An approaching medic was	84. Disputed: Zimmerman testified	84. Plaintiff's evidence does not
informed by Officer El-Farra about the	Andy fell hard to the ground after the	constitute a genuine issue of material
tasing and Andy's labored breathing.	tasering like a "sack of potatoes" and	fact precluding summary judgment; it is
The medic checked for Andy's pulse	saw nothing consistent with Andy	immaterial in light of the undisputed
and informed Officer El-Farra that he	being gently placed on the ground.	fact that GG Fire Department
needed to start CPR. This took Officer	Zimmerman testified Andy was a fat	Paramedics were promptly summoned.
El-Farra completely by surprise. When	guy and the officer could not have	In any event, Zimmerman has had no
he had looked away from Andy to	placed him gently down if they wanted.	medical training, and although his

speak to the medic, Andy had been breathing. At no time did Officer El-Farra hear or see Andy stop breathing, or notice any other physical difficulties. 84. El-Farra Decl., ¶ 13-17

Zimmerman testified when Andy hit the ground was dead and never moved again on his own. Zimmerman testified when the police rolled Andy against an officers legs he could clearly see Andy chest and stomach and he was clearly not breathing. Karschamroon testified Gendreau opened up Andy's eyes and Karschamroon could not tell if Andy was breathing. Zimmerman said he saw Gendreau slapping Andy's face and saying "to stop faking". Bua Phan also testified Andy died immediately after tasering.

Dr. Fukumoto testified the evidence is consistent with Andy being dead immediately after he saw tasered.

Dr. Fukumoto also testified that if officers did see labored or heavy

eyesight is admittedly impaired, he never wears his prescription contact lens. Zimmerman observed the incident from a distance of approximately 40-50 feet and could not tell what small, detailed movements were occurring. Zimmerman testified that it was possible that Andy was breathing after being tased and that he just did not observe it, and that his belief that Andy was dead is not based on any actual evidence. Dr. Fukumoto testified that he has no way of knowing when Andy died and that he relies on the physician's death pronouncement as to the time of death.

Zimmerman Depo., 22:3-7, 162:11-19, 180:20-21; 201:6-12, 293:23-294:12; Fukumoto Depo., 187:19-188:5, 258:7-259:25

	breathing they should have known	
	Andy was in cardiad distress and taken	
	off the handcuffs at a minimum.	
	C	
	Supporting Evidence: Exhibit A,	
	Deposition of Mark Zimmerman,	
	pp.108: 1-11/18-24, 110: 1-13/22-25,	
	111: 10- 17/18-22, 112: 25, 121: 6-	
	11/15-24, 123: 15-25, 240: 21-25, 242:	
	13-25, 243: 11-16, 244: 12-15, 246: 7-	
	19; Exhibit B, Deposition of Daniel	
	Karschamroon, pp. 397: 7-8; Exhibit D,	
	Deposition of Richard Fukumoto,	
	M.D., pp. 90: 13-16, 258: 16-19, 259:	
	2-23, 260: 1-10, 261: 13-15, 264: 21-	
	24, 266: 13-22, 268:6-22, 280: 19-25, 281:	
	10-25, 282: 7-15, 283: 4-16/21-23; Exhibit	
	E, Deposition of Bua Thi Phan, pp. 243.1:	
	16-18; 256.1: 2-5.	
85. After checking the house, the	85. Disputed: Zimmerman testified all	85. Plaintiff's evidence does not
Officers Gendreau and Karschamroon	police officers arrived outside until the	constitute a genuine issue of material

started toward the front door. They could then see the paramedics performing CPR on Andy. This was a "shock" and "surprise" to both officers. 85. Karschamroon Decl., ¶¶39; Gendreau Decl., ¶ 38

paramedics arrived looking increasingly more concerned because Andy was not moving. Zimmerman testified Andy fell hard to the ground after the tasering like a "sack of potatoes" and saw nothing consistent with Andy being gently placed on the ground. Zimmeman testified Andy was a fat guy and the officers could not have placed him gently down if they wanted. Zimmerman testified when Andy hit the ground was dead and never moved again on his own. Zimmerman testified when the police rolled Andy against an officer's legs he could clearly see Andy chest and stomach and he was clearly not breathing. Karschamroon testifed Gendreau opened up Andy's eyes and Karschamroon could not tell if Andy was breathing. Zimmerman said he saw

fact precluding summary judgment; it is immaterial in light of the undisputed fact that GG Fire Department Paramedics were promptly summoned. In any event, Zimmerman has had no medical training, and although his eyesight is admittedly impaired, he never wears his prescription contact lens. Zimmerman observed the incident from a distance of approximately 40-50 feet and could not tell what small, detailed movements were occurring. Zimmerman testified that it was possible that Andy was breathing after being tased and that he just did not observe it, and that his belief that Andy was dead is not based on any actual evidence. Dr. Fukumoto testified that he has no way of knowing when Andy died and that he relies on the physician's death pronouncement as

Gendreau slapping Andy's face and saying "to stop faking". Bua Phan also testified Andy died immediately after the tasering.

Dr. Fukumoto testified the evidence is consistent with Andy being dead ' immediately after he saw tasered.

Dr. Fukumoto also testified that if

breathing they should have known

Andy was in cardiad distress and taken
off the handcuffs at a minimum.

Supporting Evidence: Exhibit A,

officers did see labored or heavy

Deposition of Mark Zimmerman, pp.

108: 1-11118-24, 110: 1-13/22-25,

111:10-17/18-22,112: 25,121: 6-11/15-

24,123: 15-25,240: 21-25,242: 13-25,

243: 11-16,244: 12-15,246: 7-19;

Exhibit B, Deposition of Daniel

Karschamroon, pp. 397: 7-8; Exhibit 0,

Deposition of Richard Fukumoto,

to the time of death.

Zimmerman Depo., 22:3-7, 162:11-19,

180:20-21; 201:6-12, 293:23-294:12;

Fukumoto Depo., 187:19-188:5,

258:7-259:25

	M.D., pp. 90: 13-16,258: 16-19,259: 2-	
	23, 260: 1-10,261: 13-15,264: 21-	
	24,266:13-22,268:6-22,280: 19-25,281:	
	10-25,282: 7-15,283: 4-16/21-23;	
	Exhibit E, Deposition of Bua Thi Phan,	
	pp. 243.1: 16-18; 256.1: 2-5.	
86. Although the paramedics	86. Disputed: Dr. Fukumoto testified	86. Plaintiff's evidence does not
rendered emergency care and	no drug played any role in Andy's	constitute a genuine issue of material
transported to the hospital, Andy Tran	death and none where at fatal levels.	fact precluding summary judgment; it is
did not survive. Toxicology results	He testified Andy died from being	immaterial in light of Andy's actual
revealed substantial levels of	tasered and the evidence was consistent	resistance while being detained, the
Diphenhydramine and	with Andy dying immediatly after	totality of the circumstances
Trihexylphenidyl in his system at the	being hit with the taser. Andy was in	confronting the officers during that
time of death.	full cardiac arrest when the paramedics	detention, and in light of the undisputed
86. Exhibit 6, Toxicology Report	arrived and his eyes were fixed and	fact that GG Fire Department
	dilated. Dr.	Paramedics were promptly summoned.
	Fukumoto has been qualified as an	In any event, the Plaintiffs' do not
	expert in interpreting toxicology results	dispute the Defendants' UMF, but Dr.
	in Courts.	Fukumoto opinion that the tasering was
	Supporting Evidence: Exhibit D,	a factor in Andy's death was because he
	Deposition of Richard Fukumoto,	already had a bad heart and liver. Dr.

	M.D., pp. 63: 1-8, 66: 18-22, 67: 4-5,	Fukumoto testified that he has no way
	90: 13-16, 141: 5-25, 142: 6-7, 143: 2-	of knowing when Andy died and that
	3, 228: 13-25, 229: 20-25, 239: 10-	he relies on the physician's death
	14/19-25, 240: 1-25,243: 1-25, 245:	pronouncement as to the time of death.
	17-25, 260: 1-10, 283: 4-16/21-23,	Fukumoto Depo., 187:19-188:5,
	296: 1-7, 304: 1-3/16-18, 305: 8-25,	206:23 - 207:11, 258:7-259:25
	306: 1-2/10-14, 307: 1-8/22-25, 308: 5-	
	7, 309: 1-5/18-22, 347: 1-4, 355: 2-9.	
87. The Coroner listed the cause of	87. Disputed: Dr. Fukumoto testified	87. Plaintiff's evidence does not
death as "Cardiac arrhythmia during	no drug played any role in Andy's	constitute a genuine issue of material
struggle with law enforcement due to	death and none where at fatal levels.	fact precluding summary judgment; it is
dilated hyertropic cardiomyopathy with	He testified Andy died from being	immaterial in light of Andy's actual
diphenhydramine and trihexylphenidl	tasered and the evidence was consistent	resistance while being detained, the
intoxication."	with Andy dying immediatly after	totality of the circumstances
87. Exhibit 7, Autopsy Report	being hit with the taser. Andy was in	confronting the officers during that
	full cardiac arrest when the paramedics	detention, and in light of the undisputed
	arrived and his eyes were fixed and	fact that GG Fire Department
	dilated. Dr. Fukumoto has been	Paramedics were promptly summoned.
	qualified as an expert in interpreting	In any event, the Plaintiffs' do not
	toxicology results in Courts. Dr.	dispute the Defendants' UMF, but Dr.
	Fukumoto testified he wass provided	Fukumoto opinion that the tasering was

an incorrect history including being told Andy was breathing when paramedicas arrived and was never told exactly what type of struggle Andy was alleged to have been involved in with police. After being provided the true facts, including Dr. Karschamroon's deposition, Dr. Fukumoto concluded Andy died from the tasering. The Defense objected to Dr. Fukumoto reading the Internal Affair transcripts of Officer Gendreau and Karschamroon even though Dr. Fukumoto thought they could define the facts. Supporting Evidence: Exhibit D,

a factor in Andy's death was because he already had a bad heart and liver. Dr. Fukumoto testified that he has no way of knowing when Andy died and that he relies on the physician's death pronouncement as to the time of death. Fukumoto Depo., 187:19-188:5, 206:23 - 207:11, 258:7-259:25

Deposition of Richard Fukumoto, M.D., pp. 63: 1-8, 66: 18-22, 67: 4-5, 90: 13-16, 141: 5-25, 142: 6-7, 143: 2-3, 228: 13-25, 229: 20-25, 239: 10-

14/19-25, 240: 1-25, 243: 1-25, 245:

17-25, 260: 1-10, 283: 4-16/21-23,

296: 1-7, 304: 1-3-16-18, 305: 8-25,

306: 1-2/10-14, 307: 1-8/22-25, 308: 5-

7, 309: 1-5/18-22, 347: 1-4, 355: 2-9.

ADJUDICATION NUMBER 4

PLAINTIFFS CANNOT ESTABLISH A CONSTITUTIONAL VIOLATION AGAINST POLICE CHIEF POLISAR OR THE ENTITY DEFENDANTS – MONELL LIABILITY

88. Plaintiffs allege the City of Garden

Grove is a municipality, and the Garden Grove Police Department is a public agency.

88. Exhibit 1, Complaint, ¶ 6

88. Undisputed.

Discovery violation: Plaintiffs have never once seen or heard Chief Raney's name appear in the course of litigation on or before the June 10, 2011 discovery cutoff date. Chief Raney's involvement in this case was only brought to Plaintiffs' attention through Defendants' Motion for Summary Judgment. Defendants have inexplicably failed to provide any notice or disclosure as to the inclusion of Chief Raney in this litigation. Faced with a new witness introduced beyond

88. Plaintiffs do not dispute the Material Facts offered by Defendants in support of Adjudication Number 4. Rather, the Plaintiffs objection is without merit. Although Kevin Raney is the current Police Chief of Garden Grove, and is clearly qualified to testify as to the matters asserted in his declaration, the Plaintiffs had previously noticed the deposition of former Police Chief Joseph Polisar, who had retired. When a scheduling conflict necessitated changing the date set for deposition, Plaintiffs were given

	the discovery deadline, without notice,	new dates from which to choose.
	and without allowing for any	However, Plaintiffs failed to take any
	preparation, Plaintiffs would be	further action and never deposed
	unfairly prejudiced if Defendants were	former Chief Polisar. They cannot now
	allowed to retain this new witness,	claim prejudice or surprise from a
	Chief Raney, and thus ask that the	declaration from Garden Grove's Police
	Court not consider Chief Raney's	Chief, when they took no action to
	declaration and also exclude Chief	depose retired Chief Polisar, a fact of
	Raney	which counsel was aware, or his
		replacement, Chief Raney.
		Supp. Dec. of Sherman, ¶s 1-13; Supp.
		Dec. of Raney, ¶s 1-14.
89. As Chief of Police, Chief Raney	89. Disputed: Objection. This fact is	89. Plaintiffs do not dispute the
is a policymaker for the Garden Grove	irrelevant to this case as Chief Raney	Material Facts offered by Defendants in
Police Department's policies and	was not Chief of Police when the	support of Adjudication Number 4.
practices and with regard to all aspects	lawsuit was filed and was not the Chief	Rather, the Plaintiffs objection is
of police administration and conduct.	of Police on the date the incident	without merit. Although Kevin Raney
89. Declaration of Chief Kevin Raney ¶	occurred.	is the current Police Chief of Garden
2		Grove, and is clearly qualified to testify
	Objection. This assertion lacks	as to the matters asserted in his
	foundation. Defendants have not	declaration, the Plaintiffs had

provided any foundation whatsoever as to how and to what extent Chief Raney has any personal knowledge of the facts and circumstances upon which this lawsuit is based. Discovery violation: Plaintiffs have never once seen or heard Chief Raney's name appear in the course of litigation on or before the June 10,2011 discovery cutoff date. Chief Raney's involvement in this case was only brought to Plaintiffs' attention through Defendants' Motion for Summary Judgment. Defendants have inexplicably failed to provide any notice or disclosure as to the inclusion of Chief Raney in this litigation. Faced with a new witness introduced beyond the discovery deadline, without notice, and without allowing for any preparation, Plaintiffs would be unfairly prejudiced if

previously noticed the deposition of former Police Chief Joseph Polisar, who had retired. When a scheduling conflict necessitated changing the date set for deposition, Plaintiffs were given new dates from which to choose. However, Plaintiffs failed to take any further action and never deposed former Chief Polisar. They cannot now claim prejudice or surprise from a declaration from Garden Grove's Police Chief, when they took no action to depose retired Chief Polisar, a fact of which counsel was aware, or his replacement, Chief Raney. Supp. Dec. of Sherman, ¶s 1-13; Supp. Dec. of Raney, ¶s 1-14.

	Defendants were allowed to retain this	
	new witness, Chief Raney, and thus ask	
	that the Court not consider Chief	
	Raney's declaration and also exclude	
	Chief Raney as a witness.	
90. The written policies of the	90. Disputed: Objection. This fact is	90. Plaintiffs do not dispute the
Department which are valid and	irrelevant to this case as Chief Raney	Material Facts offered by Defendants in
constitutional are accessible to the	was not Chief of Police when the	support of Adjudication Number 4.
public on the Department's website.	lawsuit was filed and was not the Chief	Rather, the Plaintiffs objection is
The policies on that site and attached to	of Police on the date the incident	without merit. Although Kevin Raney
this declaration have never been found	occurred.	is the current Police Chief of Garden
to be unconstitutional in any legal	Objection. This assertion lacks	Grove, and is clearly qualified to testify
forum.	foundation. Defendants have not	as to the matters asserted in his
90. Declaration of Chief Kevin Raney ¶	provided any foundation whatsoever as	declaration, the Plaintiffs had
2	to how and to what extent Chief Raney	previously noticed the deposition of
	has any personal knowledge of the	former Police Chief Joseph Polisar,
	facts and circumstances upon which	who had retired. When a scheduling
	this lawsuit is based. No information	conflict necessitated changing the date
	has been provided to Plaintiffs and	set for deposition, Plaintiffs were given
	neither has any evidence been shown to	new dates from which to choose.
	Plaintiffs that Chief Raney knows	However, Plaintiffs failed to take any

thepolicies of the Garden Grove Police Department or how Chief Raney knows that none of those policies has ever been found to be unconsitutional in any legal forum. Lastly, Defendants have not provided the foundation necessary to categorize Chief Raney as a person qualified to give a legal opinion. Objection. Defendants are calling for speculation in this assertion.

Defendants are attempting to introduce Chief Raney's statement speculating the written policies of the Garden Grove Police Department as they existed at the time of the incident or the time of the filing of this lawsuit. Furthermore, without personal knowledge of the written policies of the Garden Grove Police Department as they were during the time periods relevant to this case, the portions of Chief Raney's

further action and never deposed former Chief Polisar. They cannot now claim prejudice or surprise from a declaration from Garden Grove's Police Chief, when they took no action to depose retired Chief Polisar, a fact of which counsel was aware, or his replacement, Chief Raney. Supp. Dec. of Sherman, ¶s 1-13; Supp.

Dec. of Raney, ¶s 1-14.

declarations regarding those policies amount to speculation about the same. Lastly, Defendants have not provided the foundation necessary to categorize Chief Raney as a person qualified to give a legal opinion. Objection. Defendants' assertion calls for a legal conclusion and/or opinion. The constitutionality of the policies, customs, and practices of the Garden Grove Police Department, whether written or unwritten, is not an issue to be determined by Chief Raney. **Discovery violation**: Plaintiffs have never once seen or heard Chief Raney's name appear in the course of litigation on or before the June 10, 2011 discovery cutoff date. Chief Raney's involvement in this case was only brought to Plaintiffs' attention through Defendants' Motion for Summary

	Judgment. Defendants have	
	inexplicably failed to provide any	
	notice or disclosure as to the inclusion	
	of Chief Raney in this litigation. Faced	
	with a new witness introduced beyond	
	the discovery deadline, without notice,	
	and without allowing for any	
	preparation, Plaintiffs would be	
	unfairly prejudiced if Defendants were	
	allowed to retain this new witness,	
	Chief Raney, and thus ask that the	
	Court not consider Chief Raney's	
	declaration and also exclude Chief	
	Raney as a witness.	
91. The City of Garden Grove has a	91. Disputed: Objection. This fact is	91. Plaintiffs do not dispute the
General Orders Manual. The General	irrelevant to this case as Chief Raney	Material Facts offered by Defendants in
Orders contained within that manual are	was not Chief of Police when the	support of Adjudication Number 4.
designed to guide employees of the	lawsuit was filed and was not the Chief	Rather, the Plaintiffs objection is
Police Department in carrying out the	of Police on the date the incident	without merit. Although Kevin Raney
duties and responsibilities imposed	occurred.	is the current Police Chief of Garden
upon them by law or necessarily in	Objection. This assertion lacks	Grove, and is clearly qualified to testify

carrying out the department's objectives.

91. Declaration of Chief Kevin Raney ¶ 3

foundation. Defendants have not provided any foundation whatsoever as to whether, how, or to what extent Chief Raney has any personal knowledge about the General Orders Manual as it existed during the time periods relevant to this case. Objection. Defendants' assertion relies upon Chief Raney's speculation. Without personal knowledge of the General Orders of the Garden Grove Police Department as they were during the time periods relevant to this case, the portions of Chief Raney's declarations regarding the General Orders amount to speculation about the same.

Discovery violation: Plaintiffs have never once seen or heard Chief Raney's name appear in the course of litigation on or before the June 10, 2011

as to the matters asserted in his declaration, the Plaintiffs had previously noticed the deposition of former Police Chief Joseph Polisar, who had retired. When a scheduling conflict necessitated changing the date set for deposition, Plaintiffs were given new dates from which to choose. However, Plaintiffs failed to take any further action and never deposed former Chief Polisar. They cannot now claim prejudice or surprise from a declaration from Garden Grove's Police Chief, when they took no action to depose retired Chief Polisar, a fact of which counsel was aware, or his replacement, Chief Raney. Supp. Dec. of Sherman, ¶s 1-13; Supp.

Dec. of Raney, $\P s 1-14$.

	discovery cutoff date. Chief Raney's	
	involvement in this case was only	
	brought to Plaintiffs' attention through	
	Defendants' Motion for Summary	
	Judgment. Defendants have	
	inexplicably failed to provide any	
	notice or disclosure as to the inclusion	
	of Chief Raney in this litigation. Faced	
	with a new witness introduced beyond	
	the discovery deadline, without notice,	
	and without allowing for any	
	preparation, Plaintiffs would be	
	unfairly prejudiced if Defendants were	
	allowed to retain this new witness,	
	Chief Raney, and thus ask that the	
	Court not consider Chief Raney's	
	declaration and also exclude Chief	
	Raney as a witness.	
92. It is important to remember that	92. Disputed: Objection. This fact is	92. Plaintiffs do not dispute the
these General Orders are "guidelines."	irrelevant to this case as Chief Raney	Material Facts offered by Defendants in
No rules or procedures can be	was not Chief of Police when the	support of Adjudication Number 4.

established which embrace all situations; some things must be left to the discretion of the individual employee. The intention of these General Orders is clearly set forth in the Statement by the Chief of Police.

92. Declaration of Chief Kevin Raney \P 4, Exhibit "1" thereto

lawsuit was filed and was not the Chief of Police on the date the incident occurred. Having not been in the policy making positino at the time of either the incident or the filing of this lawsuit, Chief Raney had not bearing on the construction or direction of the General Orders or their accompanying Statement by the Chief of Police as they existed when the incident occurred and when this lawsuit was filed. Objection: This assertion lacks foundation. Defendants have failed to establish that Chief Raney had any personal knowledge as to what the General Orders were at the time of the incident or at the filing of this lawsuit, as to what was and what was not discretionary during that same time, or as to what the intention of the then Chief of Police of the Garden Grove

Rather, the Plaintiffs objection is without merit. Although Kevin Raney is the current Police Chief of Garden Grove, and is clearly qualified to testify as to the matters asserted in his declaration, the Plaintiffs had previously noticed the deposition of former Police Chief Joseph Polisar, who had retired. When a scheduling conflict necessitated changing the date set for deposition, Plaintiffs were given new dates from which to choose. However, Plaintiffs failed to take any further action and never deposed former Chief Polisar. They cannot now claim prejudice or surprise from a declaration from Garden Grove's Police Chief, when they took no action to depose retired Chief Polisar, a fact of which counsel was aware, or his replacement, Chief Raney.

Police Department was during that time.

Objection: Defendants are calling for speculation in this assertion.

Defendants are attempting to introduce Chief Raney's statement speculating the intention of the General Orders and/or the Chief of Police as either existed at the time of the incident or the time of the filing of this lawsuit.

Without personal knowledge of the General Orders of the Garden Grove Police Department as they were during the time periods relevant to this case, the portions of Chief Raney's declarations regarding the General Orders amount to speculation about the

Objection: Objection: Defendants are offering hearsay testimony through Chief Raney. Through Chief Raney,

same.

Supp. Dec. of Sherman, ¶s 1-13; Supp. Dec. of Raney, ¶s 1-14.

Defendants are trying to introduce statements contained in the Statement of the Chief of Police.

Discovery violation: Plaintiffs have never once seen or heard Chief Raney's name appear in the course of litigation on or before the June 10,2011 discovery cutoff date. Chief Raney's involvement in this case was only brought to Plaintiffs' attention through Defendants' Motion for Summary Judgment. Defendants have inexplicably failed to provide any notice or disclosure as to the inclusion of Chief Raney in this litigation. Faced with a new witness introduced beyond the discovery deadline, without notice, and without allowing for any preparation, Plaintiffs would be unfairly prejudiced if Defendants were allowed to retain this new witness,

	Chief Raney, and thus ask that the	
	Court not consider Chief Raney's	
	declaration and also exclude Chief	
	Raney as a witness.	
93. The City of Garden Grove Police	93. Disputed: Objection. This fact is	93. Plaintiffs do not dispute the
Department has never had a policy,	irrelevant to this case as Chief Raney	Material Facts offered by Defendants in
practice or custom, written or otherwise,	was not Chief of Police when the	support of Adjudication Number 4.
authorizing or condoning of any kind of	lawsuit was filed and was not the Chief	Rather, the Plaintiffs objection is
use of excessive force, unlawful stop,	of Police on the date the incident	without merit. Although Kevin Raney
unlawful arrest, unlawful detention,	occurred.	is the current Police Chief of Garden
unlawful seizure or unlawful search,	Objection. This assertion lacks	Grove, and is clearly qualified to testify
pursuant to warrant or otherwise.	foundation. Defendants have not	as to the matters asserted in his
93. Declaration of Chief Kevin Raney ¶	provided any foundation whatsoever as	declaration, the Plaintiffs had
5	to how and to what extent Chief Raney	previously noticed the deposition of
	has any personal knowledge of the	former Police Chief Joseph Polisar,
	facts and circumstances upon which	who had retired. When a scheduling
	this lawsuit is based. Defendants have	conflict necessitated changing the date
	shown no indication that Chief Raney	set for deposition, Plaintiffs were given
	was aware of any policy, practice, or	new dates from which to choose.
	custom of the Garden Grove Police	However, Plaintiffs failed to take any
	Department during the time period	further action and never deposed

relevant to this case. Lastly,
Defendants have not provided the
foundation necessary to categorize
Chief Raney as a person qualified to
give a legal opinion.

Objection. Defendants' assertion calls for a legal conclusion and/or opinion. The constitutionality of the policies, customs, and practices of the Garden Grove Police Department, whether written or unwritten, is not an issue to be determined by Chief Raney.

Discovery violation: Plaintiffs have never once seen or heard Chief Raney's name appear in the course of litigation on or before the June 10, 2011 discovery cutoff date. Chief Raney's involvement in this case was only brought to Plaintiffs' attention through Defendants' Motion for Summary Judgment. Defendants have

former Chief Polisar. They cannot now claim prejudice or surprise from a declaration from Garden Grove's Police Chief, when they took no action to depose retired Chief Polisar, a fact of which counsel was aware, or his replacement, Chief Raney.

Supp. Dec. of Sherman, ¶s 1-13; Supp. Dec. of Raney, ¶s 1-14.

	inexplicably failed to provide any	
	notice or disclosure as to the inclusion	
	of Chief Raney in this litigation. Faced	
	with a new witness introduced beyond	
	the discovery deadline, without notice,	
	and without allowing for any	
	preparation, Plaintiffs would be	
	unfairly prejudiced if Defendants were	
	allowed to retain this new witness,	
	Chief Raney, and thus ask that the	
	Court not consider Chief Raney's	
	declaration and also exclude Chief	
	Raney as a witness.	
94. The City of Garden Grove does	94. Disputed: Objection. This fact is	94. Plaintiffs do not dispute the
not have a custom, policy and practice	irrelevant to this case as Chief Raney	Material Facts offered by Defendants in
that encourages, tolerates, or ratifies the	was not Chief of Police when the	support of Adjudication Number 4.
employment, deployment and detention	lawsuit was filed and was not the Chief	Rather, the Plaintiffs objection is
of persons as peace officers who are	of Police on the date the incident	without merit. Although Kevin Raney
unsuitable due to bias, prejudice.	occurred. Also, the current customs,	is the current Police Chief of Garden
94. Declaration of Chief Kevin Raney ¶	policies, and practices of the Garden	Grove, and is clearly qualified to testify
5	Grove Police Department, with regards	as to the matters asserted in his

to hiring biased and/or prejudiced employees, has no bearing on this lawsuit.

Objection. This assertion lacks foundation. Defendants have not provided any foundation whatsoever as to how and to what extent Chief Raney has any personal knowledge of the facts and circumstances upon which this lawsuit is based. Defendants have failed to establish whether, how, and to what extent Chief Raney knew or knows about the hiring and employment practices of the Garden Grove Police Department during the time periods relevant to this case. Defendants' assertion relies upon Chief Raney's speculation. Without personal knowledge of the General Orders of the Garden Grove Police Department as they were during the time periods

declaration, the Plaintiffs had previously noticed the deposition of former Police Chief Joseph Polisar, who had retired. When a scheduling conflict necessitated changing the date set for deposition, Plaintiffs were given new dates from which to choose. However, Plaintiffs failed to take any further action and never deposed former Chief Polisar. They cannot now claim prejudice or surprise from a declaration from Garden Grove's Police Chief, when they took no action to depose retired Chief Polisar, a fact of which counsel was aware, or his replacement, Chief Raney. Supp. Dec. of Sherman, ¶s 1-13; Supp. Dec. of Raney, ¶s 1-14.

relevant to this case, the portions of Chief Raney's declarations regarding the General Orders amount to speculation about the same.

Discovery violation: Plaintiffs have never once seen or heard Chief Raney's name appear in the course of litigation on or before the June 10,2011 discovery cutoff date. Chief Raney's involvement in this case was only brought to Plaintiffs' attention through Defendants' Motion for Summary Judgment. Defendants have inexplicably failed to provide any notice or disclosure as to the inclusion of Chief Raney in this litigation. Faced with a new witness introduced beyond the discovery deadline, without notice, and without allowing for any preparation, Plaintiffs would be unfairly prejudiced if Defendants were

	•	
	allowed to retain this new witness,	
	Chief Raney, and thus ask that the	
	Court not consider Chief Raney's	
	declaration and also exclude Chief	
	Raney as a witness.	
95. The City has a valid Use of	95. Disputed: Objection. This fact is	95. Plaintiffs do not dispute the
Physical Force policy which includes a	irrelevant to this case as Chief Raney	Material Facts offered by Defendants in
review process which is General Order	was not Chief of Police when the	support of Adjudication Number 4.
2.6.	lawsuit was filed and was not the Chief	Rather, the Plaintiffs objection is
95. Declaration of Chief Kevin Raney ¶	of Police on the date the incident	without merit. Although Kevin Raney
6, Exhibit 2 thereto	occurred. Chief Raney's current	is the current Police Chief of Garden
	understanding, if any, of the General	Grove, and is clearly qualified to testify
	Orders as they are today is not relevant	as to the matters asserted in his
	to the case at hand.	declaration, the Plaintiffs had
	Objection. This assertion lacks	previously noticed the deposition of
	foundation. Defendants have not	former Police Chief Joseph Polisar,
	provided any foundation whatsoever as	who had retired. When a scheduling
	to how and to what extent Chief Raney	conflict necessitated changing the date
	has any personal knowledge of the	set for deposition, Plaintiffs were given
	facts and circumstances upon which	new dates from which to choose.
	this lawsuit is based. Defendants have	However, Plaintiffs failed to take any

failed to establish whether, now, and to what extent Chief Raney knew or knows the General Orders of the Garden Grove Police Department as they were during the time periods relevant to this case. Lastly, Defendants have not provided the foundation necessary to categorize Chief Raney as a personal qualified to give a legal opinion. Objection: Defendants' assertion relies upon Chief Raney's speculation. Without personal knowledge of the General Orders of the Garden Grove Police Department as they were during the time periods relevant to this case, the portions of Chief Raney's declarations regarding the General Orders amount to speculation about the same.

further action and never deposed former Chief Polisar. They cannot now claim prejudice or surprise from a declaration from Garden Grove's Police Chief, when they took no action to depose retired Chief Polisar, a fact of which counsel was aware, or his replacement, Chief Raney.

Supp. Dec. of Sherman, ¶s 1-13; Supp. Dec. of Raney, ¶s 1-14.

Objection. Defendants' assertion calls

for a legal conclusion and/or opinion.

The validity of the polices, customs, and practices of the Garden Grove

Police Department, whether written or unwritten, is not an issue to be determined by Chief Raney.

Discovery violation: Plaintiffs have never once seen or heard Chief Raney's name appear in the course of litigation on or before the June 10, 2011 discovery cutoff date. Chief Raney's involvement in this case was only brought to Plaintiffs' attention through Defendants' Motion for Summary Judgment. Defendants have inexplicably failed to provide any notice or disclosure as to the inclusion of Chief Raney in this litigation. Faced with a new witness introduced beyond the discovery deadline, without notice, and without allowing for any

	preparation, Plaintiffs would be	
	unfairly prejudiced if Defendants were	
	allowed to retain this new witness,	
	Chief Raney, and thus ask that the	
	Court not consider Chief Raney's	
	declaration and also exclude Chief	
	Raney as a witness.	
96. The City has a valid Citizen	96. Objection. This assertion lacks	96. Plaintiffs do not dispute the
Complaint Procedures Policy which is	foundation. Defendants have not	Material Facts offered by Defendants in
General Order 4.8	provided any foundation whatsoever as	support of Adjudication Number 4.
96. Declaration of Chief Kevin Raney ¶	to how and to what extent Chief Raney	Rather, the Plaintiffs objection is
6, Exhibit 3 thereto	has any personal knowledge of the	without merit. Although Kevin Raney
	facts and circumstances upon which	is the current Police Chief of Garden
	this lawsuit is based. Further,	Grove, and is clearly qualified to testify
	Defendants have failed to show	as to the matters asserted in his
	whether, how, and to what extent Chief	declaration, the Plaintiffs had
	Raney knew or knows about the City of	previously noticed the deposition of
	Garden Grove's Citizen Complaint	former Police Chief Joseph Polisar,
	Procedure Policy as it existed during	who had retired. When a scheduling
	the time periods relevant to this case.	conflict necessitated changing the date
	Lastly, Defendants have not provided	set for deposition, Plaintiffs were given

the foundation necessary to categorize Chief Raney as a person qualified to give a legal opinion.

Objection. Defendants' assertion relies upon Chief Raney's speculation.

Without personal knowledge of the General Orders of the Garden Grove Police Department as they were during the time periods relevant to this case, the portions of Chief Raney's declarations regarding the General Orders amount to speculation about the same.

Objection. Defendants' assertion calls for a legal conclusion and/or opinion.

The validity of the polices, customs, and practices of the Garden Grove

Police Department, whether written or unwritten, is not an issue to be determined by Chief Raney.

Discovery violation: Plaintiffs have

However, Plaintiffs failed to take any further action and never deposed former Chief Polisar. They cannot now claim prejudice or surprise from a declaration from Garden Grove's Police Chief, when they took no action to

new dates from which to choose.

Supp. Dec. of Sherman, $\P s \ 1-13$; Supp. Dec. of Raney, $\P s \ 1-14$.

depose retired Chief Polisar, a fact of

which counsel was aware, or his

replacement, Chief Raney.

never once seen or heard Chief Raney's name appear in the course of litigation on or before the June 10, 2011 discovery cutoff date. Chief Raney's involvement in this case was only brought to Plaintiffs' attention through Defendants' Motion for Summary Judgment. Defendants have inexplicably failed to provide any notice or disclosure as to the inclusion of Chief Raney in this litigation. Faced with a new witness introduced beyond the discovery deadline, without notice, and without allowing for any preparation, Plaintiffs would be unfairly prejudiced if Defendants were allowed to retain this new witness, Chief Raney, and thus ask that the Court not consider Chief Raney's declaration and also exclude Chief Raney as a witness.

- 97. The City of Garden Grove Police
 Department is accredited by the
 Commission on Accreditation for Law
 Enforcement Agencies ("CALEA") and
 has been since July 24, 1988.
- 97. Declaration of Chief Kevin Raney ¶
- 97. **Disputed:** Objection. This fact is irrelevant to this case as Chief Raney was not Chief of Police when the lawsuit was filed and was not the Chief of Police on the date the incident occurred. Further, CALEA accreditation is not dispositive or innocence of wrongdoing. Objection. This assertion lacks foundation. Defendants have not provided any foundation whatsoever as to how and to what extent Chief Raney has any personal knowledge of the facts and circumstances upon which this lawsuit is based. Discovery violation: Plaintiffs have never once seen or heard Chief Raney's name appear in the course of litigation on or before the June 10,2011 discovery cutoff date. Chief Raney's involvement in this case was only
- 97. Plaintiffs do not dispute the Material Facts offered by Defendants in support of Adjudication Number 4. Rather, the Plaintiffs objection is without merit. Although Kevin Raney is the current Police Chief of Garden Grove, and is clearly qualified to testify as to the matters asserted in his declaration, the Plaintiffs had previously noticed the deposition of former Police Chief Joseph Polisar, who had retired. When a scheduling conflict necessitated changing the date set for deposition, Plaintiffs were given new dates from which to choose. However, Plaintiffs failed to take any further action and never deposed former Chief Polisar. They cannot now claim prejudice or surprise from a declaration from Garden Grove's Police Chief, when they took no action to

	brought to Plaintiffs' attention through	depose retired Chief Polisar, a fact of
	Defendants' Motion for Summary	which counsel was aware, or his
	Judgment. Defendants have	replacement, Chief Raney.
	inexplicably failed to provide any	Supp. Dec. of Sherman, ¶s 1-13; Supp.
	notice or disclosure as to the inclusion	Dec. of Raney, ¶s 1-14.
	of Chief Raney in this litigation. Faced	
	with a new witness introduced beyond	
	the discovery deadline, without notice,	
	and without allowing for any	
	preparation, Plaintiffs would be	
	unfairly prejudiced if Defendants were	
	allowed to retain this new witness,	
	Chief Raney, and thus ask that the	
	Court not consider Chief Raney's	
	declaration and also exclude Chief	
	Raney as a witness.	
98. The City was most recently re-	98. Disputed: Objection. This fact is	98. Plaintiffs do not dispute the
accredited in November 2010. This	irrelevant to this case as Chief Raney	Material Facts offered by Defendants in
accreditation shows that the City of	was not Chief of Police when the	support of Adjudication Number 4.
Garden Grove Police Department meets	lawsuit was filed and was not the Chief	Rather, the Plaintiffs objection is
the national standards for policies,	of Police on the date the incident	without merit. Although Kevin Raney

procedures, and training since the CALEA Accreditation requires that the City develop a comprehensive, well thought out, uniform set of written directives with directions to personnel and have a preparedness program in place.

98. Declaration of Chief Kevin Raney ¶
7

occurred. CALEA accreditation is not indicative of a lack of wrondoing on the accredited institution. Objection. This assertion lacks foundation. Defendants have not provided any foundation whatsoever as to how and to what extent Chief Raney has any personal knowledge of the facts and circumstances upon which this lawsuit is based. Further, Defendants fail to provide any foundation as to the standards of the CALEA system, as to Chief Raney's personal knowledge as to the Garden Grove Police Department's accreditation during the time periods relevant to this case. Objection. Defendants are calling for speculation in this assertion. Defendants are attempting to introduce Chief Raney's statement speculating

is the current Police Chief of Garden Grove, and is clearly qualified to testify as to the matters asserted in his declaration, the Plaintiffs had previously noticed the deposition of former Police Chief Joseph Polisar, who had retired. When a scheduling conflict necessitated changing the date set for deposition, Plaintiffs were given new dates from which to choose. However, Plaintiffs failed to take any further action and never deposed former Chief Polisar. They cannot now claim prejudice or surprise from a declaration from Garden Grove's Police Chief, when they took no action to depose retired Chief Polisar, a fact of which counsel was aware, or his replacement, Chief Raney. Supp. Dec. of Sherman, ¶s 1-13; Supp. Dec. of Raney, $\P s 1-14$.

	about the Garden Grove Police	
	Department's qualifications according	
	to CALEA standards.	
99. CALEA accreditation is the	99. Disputed: Objection. This fact is	99. Plaintiffs do not dispute the
primary method for an agency to	irrelevant to this case as Chief Raney	Material Facts offered by Defendants in
voluntarily demonstrate their	was not Chief of Police when the	support of Adjudication Number 4.
commitment to excellence in law	lawsuit was filed and was not the Chief	Rather, the Plaintiffs objection is
enforcement.	of Police on the date the incident	without merit. Although Kevin Raney
99. Declaration of Chief Kevin Raney ¶	occurred. CALEA accreditation has no	is the current Police Chief of Garden
7	bearing on the case at hand.	Grove, and is clearly qualified to testify
	Objection. This assertion lacks	as to the matters asserted in his
	foundation. Defendants have not	declaration, the Plaintiffs had
	provided any foundation whatsoever as	previously noticed the deposition of
	to how and to what extent Chief Raney	former Police Chief Joseph Polisar,
	has any personal knowledge of the	who had retired. When a scheduling
	facts and circumstances upon which	conflict necessitated changing the date
	this lawsuit is based. Defendants fail to	set for deposition, Plaintiffs were given
	provide any foundation as to the	new dates from which to choose.
	standards of the CALEA system, as to	However, Plaintiffs failed to take any
	Chief Raney's personal knowledge of	further action and never deposed
	the CALEA system, or as to Chief	former Chief Polisar. They cannot now

Raney's personal knowledge as to the Garden Grove Police Department's accreditation during the time periods relevant to this case. Further, Defindants do not give any foundation as to how Chief Raney knows that the CALEA accreditation system is the "primary" method by which a law enforcement agency is judged. Discovery violation: Plaintiffs have never once seen or heard Chief Raney's name appear in the course of litigation on or before the June 10, 2011 discovery cutoff date. Chief Raney's involvement in this case was only brought to Plaintiffs' attention through Defendants' Motion for Summary Judgment. Defendants have inexplicably failed to provide any notice or disclosure as to the inclusion of Chief Raney in this litigation. Faced claim prejudice or surprise from a declaration from Garden Grove's Police Chief, when they took no action to depose retired Chief Polisar, a fact of which counsel was aware, or his replacement, Chief Raney.

Supp. Dec. of Sherman, ¶s 1-13; Supp. Dec. of Raney, ¶s 1-14.

	with a new witness introduced beyond	
	the discovery deadline, without notice,	
	and without allowing for any	
	preparation, Plaintiffs would be	
	unfairly prejudiced if Defendants were	
	allowed to retain this new witness,	
	Chief Raney, and thus ask that the	
	Court not consider Chief Raney's	
	declaration and also exclude Chief	
	Raney as a witness.	
100. The City of Garden Grove has no	100. Disputed: Objection. This fact is	100. Plaintiffs do not dispute the
policy allowing and does not: a) subject	irrelevant to this case as Chief Raney	Material Facts offered by Defendants in
individuals to excessive force; b)	was not Chief of Police when the	support of Adjudication Number 4.
subject individuals to unlawful arrests;	lawsuit was filed and was not the Chief	Rather, the Plaintiffs objection is
c) arrest individuals without probable	of Police on the date the incident	without merit. Although Kevin Raney
cause; d) employ or retain peace	occurred.	is the current Police Chief of Garden
officers who are unsuitable due to bias,	Objection. This assertion lacks	Grove, and is clearly qualified to testify
or prejudice; e) abridge any	foundation. Defendants have not	as to the matters asserted in his
constitutional right of any citizen	provided any foundation whatsoever as	declaration, the Plaintiffs had
including the rights provided by the	to how and to what extent Chief Raney	previously noticed the deposition of
First, Fourth or Fourteenth	has any personal knowledge of the	former Police Chief Joseph Polisar,

Amendments; f) arrest individuals based on race, ethnicity or political views; g) allow officers to engage in any type of conspiracy to deny any individual of a constitutional right secured by the United States or California Constitution; and h) allow officers to engage in the "code of silence" or fail to report the use of force.

100. Declaration of Chief Kevin Raney $\P 8$

facts and circumstances upon which this lawsuit is based.

Discovery violation: Plaintiffs have

never once seen or heard Chief Raney's name appear in the course of litigation on or before the June 10,2011 discovery cutoff date. Chief Raney's involvement in this case was only brought to Plaintiffs' attention through Defendants' Motion for Summary Judgment. Defendants have inexplicably failed to provide any notice or disclosure as to the inclusion of Chief Raney in this litigation. Faced with a new witness introduced beyond the discovery deadline, without notice, and without allowing for any preparation, Plaintiffs would be unfairly prejudiced if Defendants were allowed to retain this new witness,

who had retired. When a scheduling conflict necessitated changing the date set for deposition, Plaintiffs were given new dates from which to choose. However, Plaintiffs failed to take any further action and never deposed former Chief Polisar. They cannot now claim prejudice or surprise from a declaration from Garden Grove's Police Chief, when they took no action to depose retired Chief Polisar, a fact of which counsel was aware, or his replacement, Chief Raney.

Supp. Dec. of Sherman, ¶s 1-13; Supp. Dec. of Raney, ¶s 1-14.

Chief Raney, and thus ask that the

	Court not consider Chief Raney's	
	declaration and also exclude Chief	
	Raney as a witness.	
101. City of Garden Grove has no	101. Disputed: Objection. This fact is	101. Plaintiffs do not dispute the
policy, written or otherwise, which	irrelevant to this case as Chief Raney	Material Facts offered by Defendants in
allows, ratifies or condones the conduct	was not Chief of Police when the	support of Adjudication Number 4.
described by the Plaintiffs in their	lawsuit was filed and was not the Chief	Rather, the Plaintiffs objection is
Complaint. The Plaintiffs' allegations	of Police on the date the incident	without merit. Although Kevin Raney
have no support or basis in any formal	occurred.	is the current Police Chief of Garden
or informal policy of the City of Garden	Objection. This assertion lacks	Grove, and is clearly qualified to testify
Grove and the allegations of the	foundation. Defendants have not	as to the matters asserted in his
Complaint are nothing more than	provided any foundation whatsoever as	declaration, the Plaintiffs had
assumptions made by the Plaintiffs in	to how and to what extent Chief Raney	previously noticed the deposition of
order to bring this lawsuit.	has any personal knowledge of the	former Police Chief Joseph Polisar,
101. Declaration of Chief Kevin Raney	facts and circumstances upon which	who had retired. When a scheduling
¶ 11	this lawsuit is based. Defendants have	conflict necessitated changing the date
	laid no foundation showing that Chief	set for deposition, Plaintiffs were given
	Raney had any personal knowledge of	new dates from which to choose.
	the policies of the City of Garden	However, Plaintiffs failed to take any
	Grove.	further action and never deposed

	Objection. Defendants seek to	former Chief Polisar. They cannot now
	introduce statements that amount	claim prejudice or surprise from a
	speculation. Without personal	declaration from Garden Grove's Police
	knowledge of the policies of the City of	Chief, when they took no action to
	Garden Grove, Chief Raney is merely	depose retired Chief Polisar, a fact of
	speculating as to the substance of those	which counsel was aware, or his
	policies. Further, Defendants have not	replacement, Chief Raney.
	shown that Chief Raney has any	Supp. Dec. of Sherman, ¶s 1-13; Supp.
	personal knowledge regarding the	Dec. of Raney, ¶s 1-14.
	allegations in Plaintiffs' Complaint and	
	thus any statements from Chief Raney	
	are speculative.	
102. Prior to the hiring of a police	102. Discovery violation: Plaintiffs	102. Plaintiffs do not dispute the
officer, there is an extensive	have never once seen or heard Chief	Material Facts offered by Defendants in
background investigation of applicants	Raney's name appear in the course of	support of Adjudication Number 4.
pursuant to the Commission on Peace	litigation on or before the June 10,2011	Rather, the Plaintiffs objection is
Officer Standards and Training	discovery cutoff date. Chief Raney's	without merit. Although Kevin Raney
guidelines [hereinafter "P.O.S.T."],	involvement in this case was only	is the current Police Chief of Garden
including a psychological examination	brought to Plaintiffs' attention through	Grove, and is clearly qualified to testify
and evaluation. The City undertakes	Defendants' Motion for Summary	as to the matters asserted in his
recruitment and training pursuant to	Judgment. Defendants have	declaration, the Plaintiffs had

	Т	<u></u>
P.O.S.T. standards.	inexplicably failed to provide any	previously noticed the deposition of
102. Declaration of Chief Kevin Raney	notice or disclosure as to the inclusion	former Police Chief Joseph Polisar,
¶ 12	of Chief Raney in this litigation. Faced	who had retired. When a scheduling
	with a new witness introduced beyond	conflict necessitated changing the date
	the discovery deadline, without notice,	set for deposition, Plaintiffs were given
	and without allowing for any	new dates from which to choose.
	preparation, Plaintiffs would be	However, Plaintiffs failed to take any
	unfairly prejudiced if Defendants were	further action and never deposed
	allowed to retain this new witness,	former Chief Polisar. They cannot now
	Chief Raney, and thus ask that the	claim prejudice or surprise from a
	Court not consider Chief Raney's	declaration from Garden Grove's Police
	declaration and also exclude Chief	Chief, when they took no action to
	Raney as a witness.	depose retired Chief Polisar, a fact of
		which counsel was aware, or his
		replacement, Chief Raney.
		Supp. Dec. of Sherman, ¶s 1-13; Supp.
		Dec. of Raney, ¶s 1-14.
103. The City requires extensive and	103. Disputed: Objection. This fact is	103. Plaintiffs do not dispute the
lawful training of police officers at	irrelevant to this case as Chief Raney	Material Facts offered by Defendants in
certified academies. All Garden Grove	was not Chief of Police when the	support of Adjudication Number 4.

police officers attend only P.O.S.T. certified academies which provide training that complies with the laws of the State of California and the standards set by the Commission on Peace Officer Standards and Training. The Commission on P.O.S.T. is the entity that establishes the standards that must be met by law enforcement agencies and peace officers in California.

103. Declaration of Chief Kevin Raney
¶ 13

lawsuit was filed and was not the Chief of Police on the date the incident occurred.

Objection. This assertion lacks foundation. Defendants have not provided any foundation whatsoever as to how and to what extent Chief Raney has any personal knowledge of the facts and circumstances upon which this lawsuit is based.

Discovery violation: Plaintiffs have never once seen or heard Chief Raney's name appear in the course of litigation on or before the June 10,2011 discovery cutoff date. Chief Raney's involvement in this case was only brought to Plaintiffs' attention through Defendants' Motion for Summary Judgment. Defendants have inexplicably failed to provide any notice or disclosure as to the inclusion

Rather, the Plaintiffs objection is without merit. Although Kevin Raney is the current Police Chief of Garden Grove, and is clearly qualified to testify as to the matters asserted in his declaration, the Plaintiffs had previously noticed the deposition of former Police Chief Joseph Polisar, who had retired. When a scheduling conflict necessitated changing the date set for deposition, Plaintiffs were given new dates from which to choose. However, Plaintiffs failed to take any further action and never deposed former Chief Polisar. They cannot now claim prejudice or surprise from a declaration from Garden Grove's Police Chief, when they took no action to depose retired Chief Polisar, a fact of which counsel was aware, or his replacement, Chief Raney.

	of Chief Raney in this litigation. Faced	Supp. Dec. of Sherman, ¶s 1-13; Supp.
	with a new witness introduced beyond	Dec. of Raney, ¶s 1-14.
	the discovery deadline, without notice,	
	and without allowing for any	
	preparation, Plaintiffs would be	
	unfairly prejudiced if Defendants were	
	allowed to retain this new witness,	
	Chief Raney, and thus ask that the	
	Court not consider Chief Raney's	
	declaration and also exclude Chief	
	Raney as a witness.	
104. The Department closely monitors	104. Disputed: Objection. This fact is	104. Plaintiffs do not dispute the
arrest procedures and the use of force,	irrelevant to this case as Chief Raney	Material Facts offered by Defendants in
and investigations by its officers. There	was not Chief of Police when the	support of Adjudication Number 4.
is a review procedure concerning any	lawsuit was filed and was not the Chief	Rather, the Plaintiffs objection is
alleged misconduct, and a disciplinary	of Police on the date the incident	without merit. Although Kevin Raney
procedure concerning any alleged	occurred. Chief Raney's understanding	is the current Police Chief of Garden
misconduct.	of the procedures of the Garden Grove	Grove, and is clearly qualified to testify
104. Declaration of Chief Kevin Raney	Police Department as they are today are	as to the matters asserted in his
¶ 14	not relevant to the issue of how those	declaration, the Plaintiffs had
	procedures were during the time	previously noticed the deposition of

periods relevant to this case. Objection. This assertion lacks foundation. Defendants have not provided any foundation whatsoever as to how and to what extent Chief Raney has any personal knowledge of the facts and circumstances upon which this lawsuit is based. Defendants have failed to show whether, how, and to what extent Vhief Raney has any personal knowledge of the policies and procedures regarding misconduct and discipline as they were during the time periods relevant to this case. Objection. Defendants are attempting to introduce Chief Raney's statement speculating what the policies and procedures regarding misconduct and discipline were at the time of the incident or the time of the filing of this

former Police Chief Joseph Polisar, who had retired. When a scheduling conflict necessitated changing the date set for deposition, Plaintiffs were given new dates from which to choose. However, Plaintiffs failed to take any further action and never deposed former Chief Polisar. They cannot now claim prejudice or surprise from a declaration from Garden Grove's Police Chief, when they took no action to depose retired Chief Polisar, a fact of which counsel was aware, or his replacement, Chief Raney. Supp. Dec. of Sherman, ¶s 1-13; Supp. Dec. of Raney, $\P s 1-14$.

lawsuit. Furthermore, without personal

knowledge of the polices and procedures regarding misconduct and discipline as they were durign the time periods relevant to this case, the portions of Chief Raney's declarations regarding those policies and procedures amount to speculation about the same. Discovery violation: Plaintiffs have never once seen or heard Chief Raney's name appear in the course of litigation on or before the June 10,2011 discovery cutoff date. Chief Raney's involvement in this case was only brought to Plaintiffs' attention through Defendants' Motion for Summary Judgment. Defendants have inexplicably failed to provide any notice or disclosure as to the inclusion of Chief Raney in this litigation. Faced with a new witness introduced beyond the discovery deadline, without notice,

	and without allowing for any	
	preparation, Plaintiffs would be	
	unfairly prejudiced if Defendants were	
	allowed to retain this new witness,	
	Chief Raney, and thus ask that the	
	Court not consider Chief Raney's	
	declaration and also exclude Chief	
	Raney as a witness.	
105. The City of Garden Grove has a	105. Disputed: Objection. This fact is	105. Plaintiffs do not dispute the
lawful procedure for citizen's	irrelevant to this case as Chief Raney	Material Facts offered by Defendants in
complaints and a review procedure to	was not Chief of Police when the	support of Adjudication Number 4.
monitor and take appropriate action if	lawsuit was filed and was not the Chief	Rather, the Plaintiffs objection is
there is an alleged unlawful arrest, use	of Police on the date the incident	without merit. Although Kevin Raney
of force, or other inappropriate action	occurred.	is the current Police Chief of Garden
by police officers.	Objection. This assertion lacks	Grove, and is clearly qualified to testify
105. Declaration of Chief Kevin Raney	foundation. Defendants have not	as to the matters asserted in his
¶ 15	provided any foundation whatsoever as	declaration, the Plaintiffs had
	to how and to what extent Chief Raney	previously noticed the deposition of
	has any personal knowledge of the	former Police Chief Joseph Polisar,
	facts and circumstances upon which	who had retired. When a scheduling
	this lawsuit is based. Further,	conflict necessitated changing the date

Defendants have not provided any foundation whatsoever as to how and to what extent Chief Raney has any personal knowledge of the facts and circumstances upon which this lawsuit is based. Further, Defendants have not provided any foundation showing that the procedures for citizen's complaints and review were the same as they were during the time periods relevant to this case.

Objection. Defendants are calling for speculation in this assertion.

Defendants are attempting to introduce Chief Raney's statement speculating what the procedures for citizen's complaints and review were during the time periods relevant to this case. Furthermore, without personal knowledge of these policies and procedure as they were during the time set for deposition, Plaintiffs were given new dates from which to choose. However, Plaintiffs failed to take any further action and never deposed former Chief Polisar. They cannot now claim prejudice or surprise from a declaration from Garden Grove's Police Chief, when they took no action to depose retired Chief Polisar, a fact of which counsel was aware, or his replacement, Chief Raney. Supp. Dec. of Sherman, ¶s 1-13; Supp.

Supp. Dec. of Sherman, $\P s \ 1-13$; Supp. Dec. of Raney, $\P s \ 1-14$.

periods relevant to this case, the portions of Chief Raney's declarations regarding amount to speculation about the same.

Discovery violation: Plaintiffs have never once seen or heard Chief Raney's name appear in the course of litigation on or before the June 10,2011 discovery cutoff date. Chief Raney's involvement in this case was only brought to Plaintiffs' attention through Defendants' Motion for Summary Judgment. Defendants have inexplicably failed to provide any notice or disclosure as to the inclusion of Chief Raney in this litigation. Faced with a new witness introduced beyond the discovery deadline, without notice, and without allowing for any preparation, Plaintiffs would be unfairly prejudiced if Defendants were

	allowed to retain this new witness,	
	Chief Raney, and thus ask that the	
	Court not consider Chief Raney's	
	declaration and also exclude Chief	
	Raney as a witness.	
106. With regard to the incident	106. Disputed: Objection. This fact is	106. Plaintiffs do not dispute the
addressed in this litigation, Chief Raney	irrelevant to this case as Chief Raney	Material Facts offered by Defendants in
nor his predecessor, Joseph Polisar set	was not Chief of Police when the	support of Adjudication Number 4.
in motion, a series of acts by others, or	lawsuit was filed and was not the Chief	Rather, the Plaintiffs objection is
knowingly refuse to terminate a series	of Police on the date the incident	without merit. Although Kevin Raney
of acts by others, which I knew or	occurred.	is the current Police Chief of Garden
reasonably should have known or was	Objection. This assertion lacks	Grove, and is clearly qualified to testify
plainly obvious, would cause others to	foundation. Defendants have not	as to the matters asserted in his
inflict constitutional injury.	provided any foundation whatsoever as	declaration, the Plaintiffs had
106. Declaration of Chief Kevin Raney	to how and to what extent Chief Raney	previously noticed the deposition of
¶ 16	has any personal knowledge of the	former Police Chief Joseph Polisar,
	facts and circumstances upon which	who had retired. When a scheduling
	this lawsuit is based. Defendants have	conflict necessitated changing the date
	failed to lay the foundation for	set for deposition, Plaintiffs were given
	whether, how, or to what extent Chief	new dates from which to choose.
	Raney knew former-Chief Polisar or	However, Plaintiffs failed to take any

what former-Chief Polisar did while still acting as the Garden Grove Police Department's Chief of Police. Lastly, Defendants have not provided the foundation necessary to categorize Chief Raney as a person qualified to give a legal opinion.

Objection Defendants are calling for

Objection. Defendants are calling for speculation in this assertion.

Defendants are attempting to introduce Chief Raney's statement speculating about what the actions of former-Chief Polisar were during the time periods relevant to this case and whether those actions were constitutional. Without personal knowledge of former-Chief Polisar's actions during the time periods relevant to this case, the portions of Chief Raney's declarations regarding those actions amount to speculation about the same.

further action and never deposed former Chief Polisar. They cannot now claim prejudice or surprise from a declaration from Garden Grove's Police Chief, when they took no action to depose retired Chief Polisar, a fact of which counsel was aware, or his replacement, Chief Raney.

Supp. Dec. of Sherman, ¶s 1-13; Supp.

Dec. of Raney, ¶s 1-14.

Objection. Defendants' assertion calls for a legal conclusion and/or opinion. The constitutionality of the actions of Chief Raney or of former Chief of Police Joseph is not an issue to be determined by Chief Raney. Discovery violation: Plaintiffs have never once seen or heard Chief Raney's name appear in the course of litigation on or before the June 10,2011 discovery cutoff date. Chief Raney's involvement in this case was only brought to Plaintiffs' attention through Defendants' Motion for Summary Judgment. Defendants have inexplicably failed to provide any notice or disclosure as to the inclusion of Chief Raney in this litigation. Faced with a new witness introduced beyond the discovery deadline, without notice, and without allowing for any

	preparation, Plaintiffs would be	
	unfairly prejudiced if Defendants were	
	allowed to retain this new witness,	
	Chief Raney, and thus ask that the	
	Court not consider Chief Raney's	
	declaration and also exclude Chief	
	Raney as a witness.	
107. Chief Raney has ultimate	107. Disputed: Objection. This fact is	107. Plaintiffs do not dispute the
authority to recommend hiring and	irrelevant to this case as Chief Raney	Material Facts offered by Defendants in
firing of employees.	was not Chief of Police when the	support of Adjudication Number 4.
107. Declaration of Chief Kevin Raney	lawsuit was filed and was not the Chief	Rather, the Plaintiffs objection is
¶ 17	of Police on the date the incident	without merit. Although Kevin Raney
	occurred. Chief Raney's current	is the current Police Chief of Garden
	authority over employment matters has	Grove, and is clearly qualified to testify
	no bearing on any issue in the case.	as to the matters asserted in his
	Objection. This assertion lacks	declaration, the Plaintiffs had
	foundation. Defendants have not	previously noticed the deposition of
	provided any foundation whatsoever as	former Police Chief Joseph Polisar,
	to how and to what extent Chief Raney	who had retired. When a scheduling
	has any personal knowledge of the	conflict necessitated changing the date
	facts and circumstances upon which	set for deposition, Plaintiffs were given

this lawsuit is based. Defendants have no shown whether, how, or to what extent Chief Raney had any authority over employment matters during the time periods relevant to this case. Discovery violation: Plaintiffs have never once seen or heard Chief Raney's name appear in the course of litigation on or before the June 10,2011 discovery cutoff date. Chief Raney's involvement in this case was only brought to Plaintiffs' attention through Defendants' Motion for Summary Judgment. Defendants have inexplicably failed to provide any notice or disclosure as to the inclusion of Chief Raney in this litigation. Faced with a new witness introduced beyond the discovery deadline, without notice, and without allowing for any preparation, Plaintiffs would be

new dates from which to choose. However, Plaintiffs failed to take any further action and never deposed former Chief Polisar. They cannot now claim prejudice or surprise from a declaration from Garden Grove's Police Chief, when they took no action to depose retired Chief Polisar, a fact of which counsel was aware, or his replacement, Chief Raney. Supp. Dec. of Sherman, ¶s 1-13; Supp.

Dec. of Raney, ¶s 1-14.

	unfairly prejudiced if Defendants were	
	allowed to retain this new witness,	
	Chief Raney, and thus ask that the	
	Court not consider Chief Raney's	
	declaration and also exclude Chief	
	Raney as a witness.	
108. Chief Raney and his predecessor,	108. Disputed: Objection. This fact is	108. Plaintiffs do not dispute the
Joseph Polisar, have taken no culpable	irrelevant to this case as Chief Raney	Material Facts offered by Defendants in
action or inaction with regard to the	was not Chief of Police when the	support of Adjudication Number 4.
hiring, training, supervision, control or	lawsuit was filed and was not the Chief	Rather, the Plaintiffs objection is
discipline of subordinates at the Garden	of Police on the date the incident	without merit. Although Kevin Raney
Grove Police Department, nor has he	occurred. As such, the atmosphere	is the current Police Chief of Garden
failed to remove an officer known to be	Chief Raney has created or nurtured	Grove, and is clearly qualified to testify
unfit for duty. He has not created, nor	has no bearing on any issue in this case.	as to the matters asserted in his
does he nurture, an atmosphere in	Objection. This assertion lacks	declaration, the Plaintiffs had
which unlawful or biased arrests by	foundation. Defendants have not	previously noticed the deposition of
police officers are condoned or	provided any foundation whatsoever as	former Police Chief Joseph Polisar,
encouraged.	to how and to what extent Chief Raney	who had retired. When a scheduling
108. Declaration of Chief Kevin Raney	has any personal knowledge of the	conflict necessitated changing the date
¶ 17	facts and circumstances upon which	set for deposition, Plaintiffs were given
	this lawsuit is based. Defendants have	new dates from which to choose.

failed to provide any foundation as to whether, how, or to what extent Chief Raney had any personal knowledge with regards to former-Chief Polisar or Polisar's actions during Polisar's tenure as acting Chief of Police. Lastly, Defendants have not provided the foundation necessary to categorize ChiefRaney as a person qualified to give a legal opinion.

Objection. Defendants are calling for

Objection. Defendants are calling for speculation in this assertion.

Defendants are attempting to introduce Chief Raney's statement speculating about what the actions of former-Chief Polisar were during the time periods relevant to this case and whether those actions were constitutional. Without personal knowledge of former-Chief Polisar's actions during the time periods relevant to this case, the

However, Plaintiffs failed to take any further action and never deposed former Chief Polisar. They cannot now claim prejudice or surprise from a declaration from Garden Grove's Police Chief, when they took no action to depose retired Chief Polisar, a fact of which counsel was aware, or his replacement, Chief Raney.

Supp. Dec. of Sherman, ¶s 1-13; Supp. Dec. of Raney, ¶s 1-14.

portions of Chief Raney's declarations regarding those actions amount to speculation about the same. Objection. Defendants' assertion calls for a legal conclusion and/or opinion. The constitutionality of the policies, customs, and practices of the Garden Grove Police Department, whether under Raney's term or under Polisar's term, is not an issue to be determined by Chief Raney. Discovery violation: Plaintiffs have never once seen or heard Chief Raney's name appear in the course of litigation on or before the June 10,2011 discovery cutoff date. Chief Raney's involvement in this case was only brought to Plaintiffs' attention through Defendants' Motion for Summary Judgment. Defendants have inexplicably failed to provide any

	notice or disclosure as to the inclusion	
	of Chief Raney in this litigation. Faced	
	with a new witness introduced beyond	
	the discovery deadline, without notice,	
	and without allowing for any	
	preparation, Plaintiffs would be	
	unfairly prejudiced if Defendants were	
	allowed to retain this new witness,	
	Chief Raney, and thus ask that the	
	Court not consider Chief Raney's	
	declaration and also exclude Chief	
	Raney as a witness.	
109. Neither Chief Raney nor Joseph	109. Disputed: Objection. This fact is	109. Plaintiffs do not dispute the
Polisar acquiesced to any alleged	irrelevant to this case as Chief Raney	Material Facts offered by Defendants in
constitutional deprivation claimed by	was not Chief of Police when the	support of Adjudication Number 4.
the Plaintiffs, nor has he condoned,	lawsuit was filed and was not the Chief	Rather, the Plaintiffs objection is
ratified or encouraged unlawful use of	of Police on the date the incident	without merit. Although Kevin Raney
force, arrests, detentions, or seizures or	occurred.	is the current Police Chief of Garden
searches.	Objection. This assertion lacks	Grove, and is clearly qualified to testify
109. Declaration of Chief Kevin Raney	foundation. Defendants have not	as to the matters asserted in his
¶ 18	provided any foundation whatsoever as	declaration, the Plaintiffs had

to how and to what extent Chief Raney has any personal knowledge of the facts and circumstances upon which this lawsuit is based. Defendants have failed to provide any foundation as to whether, how, or to what extent Chief Raney had any personal knowledge with regards to former-Chief Polisar or his actions during Polisar's tenure as acting Chief of Police. Lastly, Defendants have not provided the foundation necessary to foundation necessary to categorize Chief Raney as a person qualified to give a legal opinion. Objection. Defendants are calling for speculation in this assertion. Defendants are attempting to introduce Chief Raney's statement speculating about what the actions of former-Chief

previously noticed the deposition of former Police Chief Joseph Polisar, who had retired. When a scheduling conflict necessitated changing the date set for deposition, Plaintiffs were given new dates from which to choose. However, Plaintiffs failed to take any further action and never deposed former Chief Polisar. They cannot now claim prejudice or surprise from a declaration from Garden Grove's Police Chief, when they took no action to depose retired Chief Polisar, a fact of which counsel was aware, or his replacement, Chief Raney. Supp. Dec. of Sherman, ¶s 1-13; Supp. Dec. of Raney, ¶s 1-14.

Polisar were during the time periods

relevant to this case and whether those actions were constitutional. Without personal knowledge of former-Chief Polisar's actions during the time periods relevant to this case, the portions of Chief Raney's declarations regarding those actions amount to speculation about the same. Objection. Defendants' assertion calls for a legal conclusion and/or opinion. The constitutionality of the actions or inactions of either Raney or Polisar is not an issue to be determined by Chief Raney. Discovery violation: Plaintiffs have never once seen or heard Chief Raney's name appear in the course of litigation on or before the June 10,2011 discovery cutoff date. Chief Raney's involvement in this case was only brought to Plaintiffs' attention through

	Defendants' Motion for Summary	
	Judgment. Defendants have	
	inexplicably failed to provide any	
	notice or disclosure as to the inclusion	
	of Chief Raney in this litigation. Faced	
	with a new witness introduced beyond	
	the discovery deadline, without notice,	
	and without allowing for any	
	preparation, Plaintiffs would be	
	unfairly prejudiced if Defendants were	
	allowed to retain this new witness,	
	Chief Raney, and thus ask that the	
	Court not consider Chief Raney's	
	declaration and also exclude Chief	
	Raney as a witness.	
110. When complaints of unlawful use	110. Disputed: Objection. This fact is	110. Plaintiffs do not dispute the
of force, unlawful arrest, or other	irrelevant to this case as Chief Raney	Material Facts offered by Defendants in
misconduct come to Chief Raney's	was not Chief of Police when the	support of Adjudication Number 4.
attention, even when they are not	lawsuit was filed and was not the Chief	Rather, the Plaintiffs objection is
sustained, corrective actions are often	of Police on the date the incident	without merit. Although Kevin Raney
taken. If he is aware of a deficiency in	occurred. Therefore, issues and	is the current Police Chief of Garden

performance, a lack of judgment in a police officer, or of inappropriate action by a police officer, he takes appropriate action to preclude any recurrence.

110. Declaration of Chief Kevin Raney
¶ 19

complaints that are brought to Chief Raney's attention are entirely immaterial to this case.

Objection. This assertion lacks foundation. Defendants have not provided any foundation whatsoever as to how and to what extent Chief Raney has any personal knowledge of the facts and circumstances upon which this lawsuit is based.

Discovery violation: Plaintiffs have never once seen or heard Chief Raney's name appear in the course of litigation on or before the June 10,2011 discovery cutoff date. Chief Raney's involvement in this case was only brought to Plaintiffs' attention through Defendants' Motion for Summary Judgment. Defendants have inexplicably failed to provide any notice or disclosure as to the inclusion

Grove, and is clearly qualified to testify as to the matters asserted in his declaration, the Plaintiffs had previously noticed the deposition of former Police Chief Joseph Polisar, who had retired. When a scheduling conflict necessitated changing the date set for deposition, Plaintiffs were given new dates from which to choose. However, Plaintiffs failed to take any further action and never deposed former Chief Polisar. They cannot now claim prejudice or surprise from a declaration from Garden Grove's Police Chief, when they took no action to depose retired Chief Polisar, a fact of which counsel was aware, or his replacement, Chief Raney. Supp. Dec. of Sherman, ¶s 1-13; Supp. Dec. of Raney, ¶s 1-14.

	of Chief Raney in this litigation. Faced	
	with a new witness introduced beyond	
	the discovery deadline, without notice,	
	and without allowing for any	
	preparation, Plaintiffs would be	
	unfairly prejudiced if Defendants were	
	allowed to retain this new witness,	
	Chief Raney, and thus ask that the	
	Court not consider Chief Raney's	
	declaration and also exclude Chief	
	Raney as a witness.	
111. Chief Raney has not, pursuant to	111. Disputed: Objection. This fact is	111. Plaintiffs do not dispute the
official policy, custom or practice,	irrelevant to this case as Chief Raney	Material Facts offered by Defendants in
intentionally, knowingly, recklessly or	was not Chief of Police when the	support of Adjudication Number 4.
with deliberate indifference, failed to	lawsuit was filed and was not the Chief	Rather, the Plaintiffs objection is
instruct, supervise, control and/or	of Police on the date the incident	without merit. Although Kevin Raney
discipline on a continuing basis,	occurred. Chief Raney's interactions, if	is the current Police Chief of Garden
Officers Gendreau and Karschamroon.	any, with Officers Gendreau and	Grove, and is clearly qualified to testify
111. Declaration of Chief Kevin Raney	Karschamroon after the time periods	as to the matters asserted in his
¶ 19	relevant to this case are immaterial.	declaration, the Plaintiffs had
	Chief Raney's interactions with	previously noticed the deposition of

Officers Gendreau and Karschamroon during the time periods relevant to this care are also immaterial as he was not the Chief of Police at those times. Objection. This assertion lacks foundation. Defendants have not provided any foundation whatsoever as to how and to what extent Chief Raney has any personal knowledge of the facts and circumstances upon which this lawsuit is based. Further, Defendants have failed to lay the foundation for whether, how, or to what extent Chief Raney knew, interacted with, or influenced Officers Gendreau and Karschamroon during the time periods relevant to this case. Discovery violation: Plaintiffs have never once seen or heard Chief Raney's name appear in the course of litigation on or before the June 10,2011

former Police Chief Joseph Polisar, who had retired. When a scheduling conflict necessitated changing the date set for deposition, Plaintiffs were given new dates from which to choose. However, Plaintiffs failed to take any further action and never deposed former Chief Polisar. They cannot now claim prejudice or surprise from a declaration from Garden Grove's Police Chief, when they took no action to depose retired Chief Polisar, a fact of which counsel was aware, or his replacement, Chief Raney. Supp. Dec. of Sherman, ¶s 1-13; Supp. Dec. of Raney, $\P s 1-14$.

	diagonamy outs ff data Chief Demonts	
	discovery cutoff date. Chief Raney's	
	involvement in this case was only	
	brought to Plaintiffs' attention through	
	Defendants' Motion for Summary	
	Judgment. Defendants have	
	inexplicably failed to provide any	
	notice or disclosure as to the inclusion	
	of Chief Raney in this litigation. Faced	
	with a new witness introduced beyond	
	the discovery deadline, without notice,	
	and without allowing for any	
	preparation, Plaintiffs would be	
	unfairly prejudiced if Defendants were	
	allowed to retain this new witness,	
	Chief Raney, and thus ask that the	
	Court not consider Chief Raney's	
	declaration and also exclude Chief	
	Raney as a witness.	
112. Police Chief Raney is not aware	112. Disputed: Objection. This fact is	112. Plaintiffs do not dispute the
of any practice by himself or the City of	irrelevant to this case as Chief Raney	Material Facts offered by Defendants in
Garden Grove that has made it plainly	was not Chief of Police when the	support of Adjudication Number 4.

obvious that a constitutional violation would occur from this practice.

112. Declaration of Chief Kevin Raney

 \P 19

lawsuit was filed and was not the Chief of Police on the date the incident occurred. The constitutionality of Chief Raney's practices, as the current acting Chief of Police, is not at question in this case. Similarly, Chief Raney's awareness of any constitutional violations is not at issue in this case.

Objection. This assertion lacks foundation. Defendants have not provided any foundation whatsoever as to how and to what extent Chief Raney has any personal knowledge of the facts and circumstances upon which this lawsuit is based. Further, Defendants have failed to provide any foundation as to how Chief Raney would be qualified to deetermine whether a constitutional violation has occurred or not. Lastly, Defendants

Rather, the Plaintiffs objection is without merit. Although Kevin Raney is the current Police Chief of Garden Grove, and is clearly qualified to testify as to the matters asserted in his declaration, the Plaintiffs had previously noticed the deposition of former Police Chief Joseph Polisar, who had retired. When a scheduling conflict necessitated changing the date set for deposition, Plaintiffs were given new dates from which to choose. However, Plaintiffs failed to take any further action and never deposed former Chief Polisar. They cannot now claim prejudice or surprise from a declaration from Garden Grove's Police Chief, when they took no action to depose retired Chief Polisar, a fact of which counsel was aware, or his replacement, Chief Raney.

have not provided the foundation necessary to categorize Chief Raney as a person qualified to give a legal opinion.

Sss

Objection. Defendants are calling for speculation in this assertion.

Defendants are attempting to introduce Chief Raney's statement speculating about what the actions of former-Chief Polisar were during the time periods relevant to this case and whether those actions were constitutional. Without personal knowledge of former-Chief Polisar's actions during the time periods relevant to this case, the portions of Chief Raney's declarations regarding those actions amount to speculation about the same.

Objection. Defendants' assertion calls

Supp. Dec. of Sherman, ¶s 1-13; Supp. Dec. of Raney, ¶s 1-14.

for a legal conclusion and/or opinion.

The constitutionality of the policies, customs, and practices of the Garden Grove Police Department or the City of Garde Grove, whether written or unwritten, is not an issue to be determined by Chief Raney. Discovery violation: Plaintiffs have never once seen or heard Chief Raney's name appear in the course of litigation on or before the June 10,2011 discovery cutoff date. Chief Raney's involvement in this case was only brought to Plaintiffs' attention through Defendants' Motion for Summary Judgment. Defendants have inexplicably failed to provide any notice or disclosure as to the inclusion of Chief Raney in this litigation. Faced with a new witness introduced beyond the discovery deadline, without notice, and without allowing for any

	preparation, Plaintiffs would be	
	unfairly prejudiced if Defendants were	
	allowed to retain this new witness,	
	Chief Raney, and thus ask that the	
	Court not consider Chief Raney's	
	declaration and also exclude Chief	
	Raney as a witness.	
113. Police Chief Raney has reviewed	113. Disputed: Objection. This fact is	113. Plaintiffs do not dispute the
the personnel files of Officers Gendreau	irrelevant to this case as Chief Raney	Material Facts offered by Defendants in
and Karschamroon which contain no	was not Chief of Police when the	support of Adjudication Number 4.
information of a sustained citizen	lawsuit was filed and was not the Chief	Rather, the Plaintiffs objection is
complaint or a performance criticism	of Police on the date the incident	without merit. Although Kevin Raney
that excessive force was used in an	occurred. Chief Raney's review of the	is the current Police Chief of Garden
arrest, or that an arrest was made in	personnel files of Officers Gendreau	Grove, and is clearly qualified to testify
violation of the constitution.	and Karschamroon has no bearing on	as to the matters asserted in his
113. Declaration of Chief Kevin Raney	any issue in this case.	declaration, the Plaintiffs had
¶ 19	Objection. This assertion lacks	previously noticed the deposition of
	foundation. Defendants have not	former Police Chief Joseph Polisar,
	provided any foundation whatsoever as	who had retired. When a scheduling
	to how and to what extent Chief Raney	conflict necessitated changing the date
	has any personal knowledge of the	set for deposition, Plaintiffs were given

facts and circumstances upon which this lawsuit is based. Defendants have also failed to establish whether, how, or to what extent Chief Raney is familiar with the practice of reviewing personnel files or with Officers Gendreau and Karschamroon has no bearing on any issue in this case. Objection. This assertion lacks foundation. Defendants have not provided any foundation whatsoever as to how and to what extent Chief Raney has any personal knowledge of the facts and circumstances upon which this lawsuit is based. Defendants have also failed to establish whether, how, or to what extent Chief Raney is familiar with the practice of reviewing personnel files or with Officers Gendreau and Karschamroon. Moreover, there is not foundation as to

new dates from which to choose.

However, Plaintiffs failed to take any further action and never deposed former Chief Polisar. They cannot now claim prejudice or surprise from a declaration from Garden Grove's Police Chief, when they took no action to depose retired Chief Polisar, a fact of which counsel was aware, or his replacement, Chief Raney.

Supp. Dec. of Sherman, ¶s 1-13; Supp.

Supp. Dec. of Sherman, $\P s \ 1-13$; Supp. Dec. of Raney, $\P s \ 1-14$.

the authenticity of the personnel files which Chief Raney is referring to in his statements.

Objection. Defendants are offering hearsay testimony through Chief Raney. Defendants are trying to introduce statements contained in the personnel files of Officers Gendreau and Karshamroon.

Discovery violation: Plaintiffs have never once seen or heard Chief Raney's name appear in the course of litigation on or before the June 10,2011 discovery cutoff date. Chief Raney's involvement in this case was only brought to Plaintiffs' attention through Defendants' Motion for Summary Judgment. Defendants have inexplicably failed to provide any notice or disclosure as to the inclusion of Chief Raney in this litigation. Faced

	with a new witness introduced beyond	
	the discovery deadline, without notice,	
	and without allowing for any	
	preparation, Plaintiffs would be	
	unfairly prejudiced if Defendants were	
	allowed to retain this new witness,	
	Chief Raney, and thus ask that the	
	Court not consider Chief Raney's	
	declaration and also exclude Chief	
	Raney as a witness.	
114. Police Chief Raney has reviewed	114. Disputed: Objection. This fact is	114. Plaintiffs do not dispute the
the training of Officers Gendreau and	irrelevant to this case as Chief Raney	Material Facts offered by Defendants in
Karschamroon and they are graduates	was not Chief of Police when the	support of Adjudication Number 4.
from a P.O.S.Tcertified academy.	lawsuit was filed and was not the Chief	Rather, the Plaintiffs objection is
114. Declaration of Chief Kevin Raney	of Police on the date the incident	without merit. Although Kevin Raney
¶ 19	occurred. Chief Raney's review or	is the current Police Chief of Garden
	knowledge of Officers Gendreau's and	Grove, and is clearly qualified to testify
	Kazrschamroon's training has no	as to the matters asserted in his
	bearing on any issue in this case.	declaration, the Plaintiffs had
	Objection. This assertion lacks	previously noticed the deposition of
	foundation. Defendants have not	former Police Chief Joseph Polisar,

provided any foundation whatsoever as to how and to what extent Chief Raney has any personal knowledge of the facts and circumstances upon which this lawsuit is based. Defendants have failed to lay the foundation showing that Chief Raney has personal knowledge of the training and qualifications of Offices Gendreau and Karschamroon.

Discovery violation: Plaintiffs have never once seen or heard Chief Raney's name appear in the course of litigation on or before the June 10,2011 discovery cutoff date. Chief Raney's involvement in this case was only brought to Plaintiffs' attention through Defendants' Motion for Summary Judgment. Defendants have inexplicably failed to provide any notice or disclosure as to the inclusion

who had retired. When a scheduling conflict necessitated changing the date set for deposition, Plaintiffs were given new dates from which to choose. However, Plaintiffs failed to take any further action and never deposed former Chief Polisar. They cannot now claim prejudice or surprise from a declaration from Garden Grove's Police Chief, when they took no action to depose retired Chief Polisar, a fact of which counsel was aware, or his replacement, Chief Raney.

Supp. Dec. of Sherman, ¶s 1-13; Supp. Dec. of Raney, ¶s 1-14.

	of Chief Raney in this litigation. Faced	
	with a new witness introduced beyond	
	the discovery deadline, without notice,	
	and without allowing for any	
	preparation, Plaintiffs would be	
	unfairly prejudiced if Defendants were	
	allowed to retain this new witness,	
	Chief Raney, and thus ask that the	
	Court not consider Chief Raney's	
	declaration and also exclude Chief	
	Raney as a witness.	
115. While at the City of Garden	115. Disputed: Objection. This fact is	115. Plaintiffs do not dispute the
Grove, Officers Gendreau and	irrelevant to this case as Chief Raney	Material Facts offered by Defendants in
Karschamroon met or exceeded the	was not Chief of Police when the	support of Adjudication Number 4.
number of hours of continuing	lawsuit was filed and was not the Chief	Rather, the Plaintiffs objection is
education required by P.O.S.T.	of Police on the date the incident	without merit. Although Kevin Raney
115. Declaration of Chief Kevin Raney	occurred. Whether Officers Gendreau	is the current Police Chief of Garden
¶ 19	and Karschamroon met or exceeded the	Grove, and is clearly qualified to testify
	number of hours of continuing	as to the matters asserted in his
	education required by P.O.S.T. has no	declaration, the Plaintiffs had
	relevance in this case. Further, Chief	previously noticed the deposition of

Raney's knowledge of these educational endeavors is also irrelevant in this case.

Objection. This assertion lacks foundation. Defendants have not provided any foundation whatsoever as to how and to what extent Chief Raney has any personal knowledge of the facts and circumstances upon which this lawsuit is based. Defendants have failed to lay the foundation showing that Chief Raney has personal knowledge of Officers Gendreau's and Karschamroon's efforts to meet the education requirements of the P.O.S.T. program.

Objection. Defendants are calling for speculation in this assertion. Without personal knowledge of whether or not Officers Gendreau and Karschamroon actually completed these programs

former Police Chief Joseph Polisar, who had retired. When a scheduling conflict necessitated changing the date set for deposition, Plaintiffs were given new dates from which to choose. However, Plaintiffs failed to take any further action and never deposed former Chief Polisar. They cannot now claim prejudice or surprise from a declaration from Garden Grove's Police Chief, when they took no action to depose retired Chief Polisar, a fact of which counsel was aware, or his replacement, Chief Raney. Supp. Dec. of Sherman, ¶s 1-13; Supp. Dec. of Raney, $\P s 1-14$.

while meeting or exceeding the required hours, Chief Raney's statements amount to speculation about those same efforts. Discovery violation: Plaintiffs have never once seen or heard Chief Raney's name appear in the course of litigation on or before the June 10,2011 discovery cutoff date. Chief Raney's involvement in this case was only brought to Plaintiffs' attention through Defendants' Motion for Summary Judgment. Defendants have inexplicably failed to provide any notice or disclosure as to the inclusion of Chief Raney in this litigation. Faced with a new witness introduced beyond the discovery deadline, without notice, and without allowing for any preparation, Plaintiffs would be unfairly prejudiced if Defendants were

	allowed to retain this new witness,	
	Chief Raney, and thus ask that the	
	Court not consider Chief Raney's	
	declaration and also exclude Chief	
	Raney as a witness.	
116. Officers, in addition to Officers	116. Disputed: Objection. This fact is	116. Plaintiffs do not dispute the
Gendreau and Karschamroon,	irrelevant to this case as Chief Raney	Material Facts offered by Defendants in
documented P.O.S.T. certified	was not Chief of Police when the	support of Adjudication Number 4.
education, participated in formal and	lawsuit was filed and was not the Chief	Rather, the Plaintiffs objection is
informal department-provided training	of Police on the date the incident	without merit. Although Kevin Raney
on a constant and on-going basis.	occurred. The officers' completion of	is the current Police Chief of Garden
116. Declaration of Chief Kevin Raney	the P.O.S.T. program is not at issue in	Grove, and is clearly qualified to testify
¶ 19	this case. What is aty issue is the	as to the matters asserted in his
	adequacy of that and similar programs	declaration, the Plaintiffs had
	as well as the adequacy of enforcement	previously noticed the deposition of
	and implementation of these training	former Police Chief Joseph Polisar,
	programs.	who had retired. When a scheduling
	Objection. This assertion lacks	conflict necessitated changing the date
	foundation. Defendants have not	set for deposition, Plaintiffs were given
	provided any foundation whatsoever as	new dates from which to choose.
	to how and to what extent Chief Raney	However, Plaintiffs failed to take any

has any personal knowledge of the facts and circumstances upon which this lawsuit is based. There is no foundation to speak of showing that Chief Raney had personal knowledge of officers Gendreau and Karschamroon or any other officer completing the P.O.S.T or any other training program.

Objection. Defendants are calling for speculation in this assertion. Without personal knowledge of any of the officers completing the P.O.S.T. or any other training program, Chief Raney is essentially speculating about the completion by these officers of those programs.

Discovery violation: Plaintiffs have never once seen or heard Chief Raney's name appear in the course of litigation on or before the June 10,2011 further action and never deposed former Chief Polisar. They cannot now claim prejudice or surprise from a declaration from Garden Grove's Police Chief, when they took no action to depose retired Chief Polisar, a fact of which counsel was aware, or his replacement, Chief Raney.

Supp. Dec. of Sherman, ¶s 1-13; Supp.

Dec. of Raney, ¶s 1-14.

	1' (C. 1) (C. 1) (D. 1	
	discovery cutoff date. Chief Raney's	
	involvement in this case was only	
	brought to Plaintiffs' attention through	
	Defendants' Motion for Summary	
	Judgment. Defendants have	
	inexplicably failed to provide any	
	notice or disclosure as to the inclusion	
	of Chief Raney in this litigation. Faced	
	with a new witness introduced beyond	
	the discovery deadline, without notice,	
	and without allowing for any	
	preparation, Plaintiffs would be	
	unfairly prejudiced if Defendants were	
	allowed to retain this new witness,	
	Chief Raney, and thus ask that the	
	Court not consider Chief Raney's	
	declaration and also exclude Chief	
	Raney as a witness.	
117. The City of Garden Grove has	117. Disputed: Objection. This fact is	117. Plaintiffs do not dispute the
not directly or indirectly approved or	irrelevant to this case as Chief Raney	Material Facts offered by Defendants in
ratified any unlawful, deliberate,	was not Chief of Police when the	support of Adjudication Number 4.

malicious, reckless or wanton conduct of Officers Gendreau and Karschamroon or any other Garden Grove Police Department employee. Specifically the City does not have a custom, policy, or practice, nor acted with deliberate indifference: a) by allowing or condoning arrests made without probable cause; b) by allowing or condoning the use of excessive force, c) by allowing or condoning the writing of false reports, and/or; d) by allowing arrests due to bias, ethnicity, race or political views; e) by allowing officers to engage in the code of silence or any type of conspiracy to deprive any individual of any right, or f) by otherwise depriving citizens of their constitutional and statutory rights, privileges and immunities. 117. Declaration of Chief Kevin Raney

lawsuit was filed and was not the Chief of Police on the date the incident occurred.

Objection. This assertion lacks foundation. Defendants have not provided any foundation whatsoever as to how and to what extent Chief Raney has any personal knowledge of the facts and circumstances upon which this lawsuit is based. There is not foundation laid as to whether, how, or to what extent Chief Raney is familiar with or has had a part in creating or implementing the policies andn procedures of the City of Garden Grove or the Garden Grove Police Department. Lastly, Defendants have not provided the foundation necessary to categorize Chief Raney as a personal qualified to give a legal opinion. Objection. Defendants are calling for

Rather, the Plaintiffs objection is without merit. Although Kevin Raney is the current Police Chief of Garden Grove, and is clearly qualified to testify as to the matters asserted in his declaration, the Plaintiffs had previously noticed the deposition of former Police Chief Joseph Polisar, who had retired. When a scheduling conflict necessitated changing the date set for deposition, Plaintiffs were given new dates from which to choose. However, Plaintiffs failed to take any further action and never deposed former Chief Polisar. They cannot now claim prejudice or surprise from a declaration from Garden Grove's Police Chief, when they took no action to depose retired Chief Polisar, a fact of which counsel was aware, or his replacement, Chief Raney.

¶ 20	speculation in this assertion.	Supp. Dec. of Sherman, ¶s 1-13; Supp.
	Defendants are attempting to introduce	Dec. of Raney, ¶s 1-14.
	Chief Raney's statement speculating	
	whether, how, or to what extent the	
	City of Garden Grove implements its	
	policies, procedures, and practices.	
	Without personal knowledge of these	
	policies, procedures, and practices,	
	Chief Raney is merely speculating	
	about same.	
	Objection. Defendants' assertion calls	
	for a legal conclusion and/or opinkon.	
	The legality of the polices, customs,	
	and practices of the Garden Grove	
	Police Department or of the City of	
	Garden Grove, whether written or	
	unwritten, is not an issue to be	
	determined by Chief Raney.	
	Discovery violation: Plaintiffs have	
	never once seen or heard Chief Raney's	
	name appear in the course of litigation	

	on or before the June 10,2011	
	discovery cutoff date. Chief Raney's	
	involvement in this case was only	
	·	
	brought to Plaintiffs' attention through	
	Defendants' Motion for Summary	
	Judgment. Defendants have	
	inexplicably failed to provide any	
	notice or disclosure as to the inclusion	
	of Chief Raney in this litigation. Faced	
	with a new witness introduced beyond	
	the discovery deadline, without notice,	
	and without allowing for any	
	preparation, Plaintiffs would be	
	unfairly prejudiced if Defendants were	
	allowed to retain this new witness,	
	Chief Raney, and thus ask that the	
	Court not consider Chief Raney's	
	declaration and also exclude Chief	
	Raney as a witness.	
118. In summary, the City undertakes	118. Disputed: Objection. This fact is	118. Plaintiffs do not dispute the
a number of measures to monitor and	irrelevant to this case as Chief Raney	Material Facts offered by Defendants in

assure that unlawful arrests, use of force, or other misconduct did not occur. They include the following: a) review procedures when there is an allegation of an unlawful arrest, or other misconduct; b) close monitoring, review and supervision of police officers; c) internal affairs investigations; d) citizen complaint procedure; e) disciplinary proceedings and measures; f) extensive and continuous training of officers; and g) compliance with P.O.S.T. standards. 118. Declaration of Chief Kevin Raney ¶ 21

was not Chief of Police when the lawsuit was filed and was not the Chief of Police on the date the incident occurred. Whether the City of Garden Grove currently has policies and procedures in place to address instances of misconduct on the part of its police force is not an issue in this case. Objection. This assertion lacks foundation. Defendants have not provided any foundation whatsoever as to how and to what extent Chief Raney has any personal knowledge of the facts and circumstances upon which this lawsuit is based. Defendants have shown no indication as to whether, how, or to what extent Chief Raney was aware of or any part in any policy, practice, or custom of the Garden Grove Police Department or the City of Garden Grove during the time periods

support of Adjudication Number 4. Rather, the Plaintiffs objection is without merit. Although Kevin Raney is the current Police Chief of Garden Grove, and is clearly qualified to testify as to the matters asserted in his declaration, the Plaintiffs had previously noticed the deposition of former Police Chief Joseph Polisar, who had retired. When a scheduling conflict necessitated changing the date set for deposition, Plaintiffs were given new dates from which to choose. However, Plaintiffs failed to take any further action and never deposed former Chief Polisar. They cannot now claim prejudice or surprise from a declaration from Garden Grove's Police Chief, when they took no action to depose retired Chief Polisar, a fact of which counsel was aware, or his

relevant to this case.

Objection. Defendants are calling for speculation in this assertion.

Defendants are attempting to introduce Chief Raney's statement speculating. Discovery violation: Plaintiffs have never once seen or heard Chief Raney's name appear in the course of litigation on or before the June 10,2011 discovery cutoff date. Chief Raney's involvement in this case was only brought to Plaintiffs' attention through Defendants' Motion for Summary Judgment. Defendants have inexplicably failed to provide any notice or disclosure as to the inclusion of Chief Raney in this litigation. Faced with a new witness introduced beyond the discovery deadline, without notice, and without allowing for any

replacement, Chief Raney.

Supp. Dec. of Sherman, $\P s 1-13$; Supp.

Dec. of Raney, $\P s 1-14$.

preparation, Plaintiffs would be

	unfairly prejudiced if Defendants were	
	allowed to retain this new witness,	
	Chief Raney, and thus ask that the	
	Court not consider Chief Raney's	
	declaration and also exclude Chief	
	Raney as a witness.	
119 Chief Raney denies that he had any	119. Disputed: Objection. This fact is	119. Plaintiffs do not dispute the
reason to believe that any actions that	irrelevant to this case as Chief Raney	Material Facts offered by Defendants in
he took or neglected to take were	was not Chief of Police when the	support of Adjudication Number 4.
violative of Plaintiffs' constitutional	lawsuit was filed and was not the Chief	Rather, the Plaintiffs objection is
rights or were otherwise unlawful.	of Police on the date the incident	without merit. Although Kevin Raney
119. Declaration of Chief Kevin Raney	occurred.	is the current Police Chief of Garden
¶ 22	Objection. This assertion lacks	Grove, and is clearly qualified to testify
	foundation. Defendants have not	as to the matters asserted in his
	provided any foundation whatsoever as	declaration, the Plaintiffs had
	to how and to what extent Chief Raney	previously noticed the deposition of
	has any personal knowledge of the	former Police Chief Joseph Polisar,
	facts and circumstances upon which	who had retired. When a scheduling
	this lawsuit is based. Defendants have	conflict necessitated changing the date
	failed to provide any foundation as to	set for deposition, Plaintiffs were given
	whether, how, or to what extent Chief	new dates from which to choose.

Raney played any role in the events at the heart of this case. Lastly, Defendants have not provied the foundation necessary to categorize Chief Raney as a person qualified to give a legal opinion. Objection. Defendants are calling for speculation in this assertion. Defendants are attempting to introduce Chief Raney's statement speculating the legality of his involvement, if any, in the events at the heart of this case. Objection. Defendants' assertion calls for a legal conclusion and/or opinion. The legality and/or constitutionality of the polices, customs, and practices of the Garden Grove Police Department, wiether written or unwritten, or of Chief Raney's actions, if any in this case, is not an issue to be determined by Chief Raney.

However, Plaintiffs failed to take any further action and never deposed former Chief Polisar. They cannot now claim prejudice or surprise from a declaration from Garden Grove's Police Chief, when they took no action to depose retired Chief Polisar, a fact of which counsel was aware, or his replacement, Chief Raney. Supp. Dec. of Sherman, ¶s 1-13; Supp. Dec. of Raney, $\P s 1-14$.

Discovery violation: Plaintiffs have never once seen or heard Chief Raney's name appear in the course of litigation on or before the June 10,2011 discovery cutoff date. Chief Raney's involvement in this case was only brought to Plaintiffs' attention through Defendants' Motion for Summary Judgment. Defendants have inexplicably failed to provide any notice or disclosure as to the inclusion of Chief Raney in this litigation. Faced with a new witness introduced beyond the discovery deadline, without notice, and without allowing for any preparation, Plaintiffs would be unfairly prejudiced if Defendants were allowed to retain this new witness, Chief Raney, and thus ask that the Court not consider Chief Raney's declaration and also exclude Chief

	Raney as a witness.	
120. At all relevant times, Chief	120. Disputed: Objection. This fact is	120. Plaintiffs do not dispute the
Raney reasonably believed that	irrelevant to this case as Chief Raney	Material Facts offered by Defendants in
everything that he did as it relates to	was not Chief of Police when the	support of Adjudication Number 4.
Plaintiffs was entirely proper.	lawsuit was filed and was not the Chief	Rather, the Plaintiffs objection is
120. Declaration of Chief Kevin Raney	of Police on the date the incident	without merit. Although Kevin Raney
¶ 22	occurred.	is the current Police Chief of Garden
	Objection. This assertion lacks	Grove, and is clearly qualified to testify
	foundation. Defendants have not	as to the matters asserted in his
	provided any foundation whatsoever as	declaration, the Plaintiffs had
	to how and to what extent Chief Raney	previously noticed the deposition of
	has any personal knowledge of the	former Police Chief Joseph Polisar,
	facts and circumstances upon which	who had retired. When a scheduling
	this lawsuit is based.	conflict necessitated changing the date
	Objection. Defendants are calling for	set for deposition, Plaintiffs were given
	speculation in this assertion.	new dates from which to choose.
	Defendants are attempting to introduce	However, Plaintiffs failed to take any
	Chief Raney's statement speculating on	further action and never deposed
	the legality of his involvement, if any,	former Chief Polisar. They cannot now
	in the events at the heart of this case.	claim prejudice or surprise from a
	Discovery violation: Plaintiffs have	declaration from Garden Grove's Police

never once seen or heard Chief Raney's name appear in the course of litigation on or before the June 10,2011 discovery cutoff date. Chief Raney's involvement in this case was only brought to Plaintiffs' attention through Defendants' Motion for Summary Judgment. Defendants have inexplicably failed to provide any notice or disclosure as to the inclusion of Chief Raney in this litigation. Faced with a new witness introduced beyond the discovery deadline, without notice, and without allowing for any preparation, Plaintiffs would be unfairly prejudiced if Defendants were allowed to retain this new witness, Chief Raney, and thus ask that the Court not consider Chief Raney's declaration and also exclude Chief Raney as a witness.

Chief, when they took no action to depose retired Chief Polisar, a fact of which counsel was aware, or his replacement, Chief Raney.

Supp. Dec. of Sherman, ¶s 1-13; Supp.

Dec. of Raney, $\P s 1-14$.

ADJUDICATION NUMBER 5

THE SURVIVAL CLAIM BROUGHT BY DECEDENT'S SUCCESSOR IN INTEREST FAILS DUE TO LACK OF CONSTITUTIONAL VIOLATIONS, OR, THE APPLICATION OF QUALIFIED IMMUNITY

121. On September 3, 2008, at approximately 11:29 a.m., GGPD officers Richard Gendreau and Daniel Karschamroon were dispatched to a report of a "violent, mentally ill male" trying to break into the residence, that someone had been assaulted, and that there was an unknown "weapon" involved.

121. Karschamroon Decl., ¶¶ 1-5; Gendreau Decl., ¶¶ 1-5; Exhibit 2, Transcript/Audio 911 Recording; Exhibit 3, Dispatch CAD. Transcript nor the Dispatch CAD state anything about a "violent, mentally ill male" trying to break into residence nor assaulting anyone. They both say this was a 5150 call and Andy needs to' be taken to a hospital. The 911 caller never said Andy had weapons, the dispatcher made a mistake.

Exhibit 2, Transcript/Audio 911;
Defense Exhibit 3, Dispatch CD. As will be shown throughout Gendreau's and Karshamroon's Declaration are inconsitent with both their Internal

121 Neither the 911 audio nor the CAD dispatch refer to "5150" as claimed by Plaintiffs, but do refer to [Andy Tran] as being crazy, with weapons, and having committed an assault. Although requests were made to take [Andy] to the hospital, that does not constitute a genuine issue of material fact precluding summary judgment; officer actions are judged as to all information known or relied upon.

Karschamroon Decl., ¶¶ 1-5;
Gendreau Decl., ¶¶ 1-5; Exhibit 2,
Transcript/ Audio 911 Recording;
Exhibit 3, Dispatch CAD.

	Affairs interviews and Deposition	
	Testimony.	
	Supporting Evidence: Exhibit C,	
	Deposition of Gendreau, pp. 305: 5-25;	
	Exhibit I, Gendreau GGPD Internal	
	Affairs Interview, pp. 17-18.	
122. Police Dispatch as well as the	122. Disputed: Dispatch apparently	122. Plaintiffs do not dispute
CAD printout noted the male subject	did not	Defendants' UMF, but rather argue that
(Andy Tran) was a "mental case" and	understand 911 call because the 911	police dispatch erroneously concluded
"crazy," that he had weapons, and that a	caller said nothing about weapons.	that Andy had weapons. This does not
crying child could be heard in the	Dispatch does indicate major	constitute a genuine issue of material
background. The reporting party	languange barrier between 911 caller	fact precluding summary judgment;
indicated that he was dizzy and he	and dispacth. The CAD printout clearly	officer actions are judged as to all
would not answer questions about Andy	shows this was a 5150 call and	information known or relied upon, and
Tran's location, and kept repeating	Gendreau testified he was given further	it remains undisputed that Dispatch
"send someone right now, send	information of	relayed information that Andy was
someone right now. Take to hospital."	Andy's prior mental health history. The	crazy, with weapons, and had
122. Karschamroon Decl., ¶ 6	CAD clearly states Andy needs to be	committed an assault. Further, the
Gendreau Decl., ¶ 6; Exhibit 2,	taken to the hospital.	Plaintiffs citation to Officer Gendreau's
Transcript/Audio 911 recording;	Supporting Evidence: Exhibit C,	deposition testimony does not support
Exhibit 3, Dispatch CAD.	Deposition of Gendreau, pp. 305: 5-25;	their assertion that he was aware of

	Exhibit I, Gendreau GGPD Internal	Andy's mental health history before
	Affairs Interview, pp. 17-18.	arriving on scene, but rather only that
		he did not recall telling Internal Affairs
		that he acquired such knowledge. In
		any event, such knowledge would be
		immaterial in light of Andy's actual
		resistance while being detained, and the
		totality of the circumstances
		confronting the officers during that
		detention.
		Transcript/Audio 911 Recording;
		Exhibit 3, Dispatch CAD; Gendreau
		Depo., 305:5-25
123 Officers Karschamroon and	123. Disputed: Mark Zimmerman	123. The Plaintiff's citation to Mark
Gendreau arrived at approximately	testified he never saw Andy place any	Zimmerman's deposition does not
11:36 a.m., with Karschamroon first to	portion of his body in the window; in	support their assertion. Zimmerman
arrive. He noticed a male individual	fact he testified he began yelling as	testified that Andy stopped "directing
who appeared to be trying to break into	Andy taking off screen and Andy then	his attention towards opening the
or enter the residence through a	turned towards him at the same time	window and getting in the house" after
window, and broken screen nearby. As	Karschamroon arrived.	Officer Karschamroon ordered Andy to
Officer Karschamroon approached him,	Supporting Evidence: Exhibit A,	stop. In any event, this does not

his body halfway into the window and	Deposition of Mark Zimmerman, pp.	constitute a genuine issue of material
he appeared to be trying to grab	51: 9-22, 52: 1-24.	fact precluding summary judgment; it is
something from inside.		immaterial in light of Andy's actual
123. Karschamroon Decl., ¶ 7; Exhibit		resistance while being detained, and the
3, Dispatch CAD.		totality of the circumstances
		confronting the officers during that
		detention.
		Zimmerman Depo., 50:1-19, 52:7-16
124. Officer Karschamroon was aware	124. Disputed: Officer Karschamroon	124. The Plaintiffs do not dispute
through Dispatch the subject's name	testified he called Andy by his name	Officer Karschamroon called Andy by
was Andy Tran, so he called out	Andy and he was uncertain if he	name, only the source of that
"Andy" three to four times to get his	learned Andy's name from hearing Mr.	information. Further, the cited
attention. Andy stopped, slowly turned	Zimmerman saying it or hearing	deposition testimony does not indicate
around, and faced Officer	Andy's name from dispatch.	how many times Officer Karschamroon
Karschamroon. Andy was instructed to	Karschamroon testified Andy	called Andy's name. The remainder of
come down from the porch, which he	responded immediately and never	Defendants' UMF remains
eventually did, approaching Officer	testified he yelled 3-4 times.	unchallenged. In any event, the
Karschamroon with his hands at his	Supporting Evidence: Exhibit B,	Plaintiffs' evidence does not constitute
sides.	Deposition of Daniel Karschamroon,	a genuine issue of material fact
124. Karschamroon Decl., $\P\P$ 8-10.	pp. 245:15-25,246: 1-4.	precluding summary judgment; it is
		immaterial in light of Andy's actual

		resistance while being detained, and the
		totality of the circumstances
		confronting the officers during that
		detention.
		Karschamroon Depo., 245:15-25,
		246:1-4
125 Officer Karschamroon could	125. Disputed: Karschamroon	125. Plaintiffs' evidence does not
Andy had a blank stare and appeared to	testified Andy had a confused, puzzled	constitute a genuine issue of material
be confused or unsure of what was	look on his face and appeared in need	fact precluding summary judgment; it is
going on. Andy stopped his approach	of medical help.	immaterial in light of Andy's actual
when he was approximately 20 feet	Karschamroon testified he told Andy to	resistance while being detained, and the
from the officer, who then asked Andy	stop when he was 10-15 feet away and	totality of the circumstances
to come closer. As Andy slowly	put his hands on his head and he	confronting the officers during that
approached to within 10 feet of Officer	complied. He never testified Andy ever	detention. In any event, the deposition
Karschamroon's location, he was	stopped before being told to do so and	testimony of Officer Karschamroon
instructed to stop. Andy stopped, but	was told to come closer.	cited by Plaintiffs is consistent with
maintained his blank expression.	Supporting Evidence: Exhibit B,	Defendants' UMF, namely, that Andy
125. Karschamroon Decl., $\P\P$ 11, 12	Deposition of Daniel Karschamroon,	was instructed to stop either "10 feet"
	pp.	or "10-15 feet" from Officer
	244: 15-25, 259: 1-7, 257: 15-22, 276:	Karschamroon's location. The cited
	19-25, 279: 14-16; Exhibit J,	deposition testimony does not include a

	Karschamroon GGPD Internal Affairs	question whether Andy stopped at any
	Interview, pp. 5-6.	time prior to being so instructed, and
		would be an immaterial variance
		regardless.
126 Andy was instructed to put his	126. Undisputed	126. Undisputed.
hands on top of his head and turn		
around, and he slowly complied with		
the directive. Officer Karschamroon		
then approached Andy and told him to		
interlock his fingers, which he did.		
Andy never spoke, but did appear to		
understand what was being said. 126.		
Karschamroon Decl., $\P\P$ 13, 14		
127. Grabbing Andy's hands, Officer	127. Disputed: Neither the 911	127. Plaintiffs' evidence does not
Karschamroon sought to reassure him	Transcript nor the Dispatch CAD state	dispute that Officer Karschamroon
by saying "there's nothing wrong,"	anything about a "violent, mentally ill	attempted to calm and relax Andy, nor
"we're just here to help you," and to	male" trying to break into residence nor	the nature of the call received by
"calm down" and "relax." However, it	assaulting anyone. They both say this	Dispatch. Neither the 911 audio nor the
was important to get Andy secured and	was a 5150 call and Andy needs to be	CAD dispatch refer to "5150" as
handcuffed as the call indicated he was	taken to a hospital. The 911 caller	claimed by Plaintiffs, but do refer to

		T
a violent mental individual with a	never	[Andy Tran] as being crazy, with
weapon.	said Andy had weapons, the dispatcher	weapons, and having committed an
127. Karschamroon Decl., $\P\P$ 14	made a mistake. Given most of	assault. Although requests were made
	Karschamroon's Declaration is vastly	to take [Andy] to the hospital, that does
	different than his Internal Affairs	not constitute a genuine issue of
	Interview and Deposition Testimony	material fact precluding summary
	anything he says he did is subject to	judgment; officer actions are judged as
	impeachment now for prior inconsitent	to all information known or relied
	statements, thereby everything in his	upon.
	Declaration should be viewed with	Karschamroon Decl., $\P\P$ 1-5;
	Suspicion.	Gendreau Decl., $\P\P$ 1-5; Exhibit 2,
	Supporting Evidence: Defense	Transcript/Audio 911 Recording;
	Exhibit 2, Transcript/Audio 911;	Exhibit 3, Dispatch CAD.
	Defense Exhibit 3, Dispatch CAD.	
128. As the first handcuff went on	128. Disputed: Officer Karschamroon	128. Plaintiffs argue semantics but do
Andy's right wrist, his hands	never told Internal Affairs Andy's	not dispute any material fact. Officer
immediately tensed up into fists.	hands ever balled into fists and he	Karschamroon testified at his
Officer Richard Gendreau arrived	testified repeatedly that Andy's hands	deposition that when a handcuff was
Officer Karschamroon was trying to	always remained interlocked after he	placed on Andy's right wrist, Andy
separate Andy's now-clenched fists.	was told to do so and he never saw	"tensed" and Officer Karschamroon

128. Karschamroon Decl., ¶ 15	Andy's hands ball into fists.	"could feel his fingers closing, kind of
	Karschamroon further testified he did	curling up from that interlocked
	not know whether Andy's tension was a	position" and "close up as if the fingers
	result of his attempt to follow the last	were curling." Officer Karschamroon
	command given to interlock his fingers.	also stated in his deposition that Andy
	He also testified Andy was never	was "actively resisting" and that he
	aggressive.	"thought it might turn violent."
	Supporting Evidence: Exhibit J,	Karschamroon Depo., 321:22-322:22,
	Karschamroon GGPD Internal Affairs	362:12-17, 366:14-19
	Interview, pp. 7-8; Exhibit B,	
	Deposition of Daniel Karschamroon,	
	pp. 261: 12-18, 264: 17-20, 265: 13-18,	
	268: 9-10, 270: 10-11, 281: 9-25, 284:	
	1-25, 285: 1-6.	
129. Officer Gendreau noticed the	129. Disputed: Officer Gendreau said	129. Plaintiffs do not dispute any
struggle to get Andy's arms behind his	he walked fast and did not run. Officer	material fact, argue semantics, and
back, so he immediately ran over to	Karschamroon testified he never	mischaracterize testimony. Mark
assist. Officer Gendreau was told that	struggled with Andy is Gendreau's	Zimmerman confirmed that Officer
one handcuff was secured, but that	presence nor tried to force Andy's	Gendreau approached at "a pretty fast
Andy was not allowing himself to be	hands behind his back. Karschamroon	pace." Officer Gendreau testified that
cuffed. Officer Karschamroon had a	never said Andy would not allow self	Officer Karschamroon told him that

concern that the encounter might turn violent due to Andy's reaction when the first handcuff was placed on his wrist.

129. Karschamroon Decl., ¶¶ 16, 17;

Gendreau Decl., ¶¶ 7, 8

to be handcuff and said he told Gendreau Andy was complying but hands tensed when placed first handcuff on. Also Karschamroon and Zimmerman disagree with most of what Gendreau said occured and both Gendreau and Karschamroon have now filed Declarations which are filed with inconsistent statements from their Internal Affairs Interviews and Deposition Testimony their Declarations should be viewed with suspicion.

Supporting Evidence: Exhibit C,
Deposition of Richard Gendreau, pp.
175: 1-25, 176: 1-25, 177: 1-5, 206:
19-25; Exhibit B, Deposition of Daniel
Karschamroon, pp. 285: 11-13;
Karschamroon GGPD Internal Affairs
Interview, pp. 9.

Andy was tensed up and that he couldn't get Andy's hands behind his back into a handcuffing position. This is consistent with Officer Karschamroon's testimony that he told Gendreau that Andy was complying and tensed up after one handcuff was secured. Nothing in the cited testimony disputes that Andy continued to resist after Gendreau arrived. Further, Mark Zimmerman testified that Officer Gendreau did assist Officer Karschamroon by putting "his hands on Andy's hands or on the other officer's hands or in that vicinity" for "about 20 seconds" in what appeared to him as an effort to "keep more control" of Andy. Zimmerman Depo., 92:19-25, 93:16-19, 209:7-22; Gendreau Depo., 175:20-24; Karschamroon Depo., 285:11-14.

130. Andy continued to resist, failed to obey commands, and did not speak. Officer Gendreau could see that Andy's method of resistance was "complete rigidity"; both of his arms were up, his fists were balled, and he was shaking. Despite Officer Karschamroon's best efforts to pull Andy's arms down behind his back, his arms would not move.

130. Karschamroon Decl., ¶ 16 Gendreau Decl., ¶ 9

130. **Disputed:** Officer Karschamroon had full control of Andy and there was never a struggle between the two. Officer Karschamroon testified he never struggled with Andy is Gendreau's presence nor tried to force Andy's hands behind his back. Karschamroon never said Andy would not allow self to be handcuff and said he told Gendreau Andy was complying but hands tensed when placed first handcuff on. Also given Karschamroon and Zimmennan disagree with most of what Gendreau said occured and both Gendreau and Karschamroon have now filed Declarations which are filed with inconsistent statements from their Internal Affairs Interviews and Deposition Testimony their Declarations should be viewed with

130. Plaintiffs' evidence does not dispute any material fact, and does not indicate that Officer Karschamroon had full control of Andy or that there was no resistance. Plaintiffs ignore Officer Karschamroon testimony that when a handcuff was placed on Andy's right wrist, Andy "tensed" and Officer Karschamroon "could feel his fingers closing, kind of curling up from that interlocked position" and "close up as if the fingers were curling." Officer Karschamroon also stated in his deposition that Andy was "actively resisting" by not allowing his arms to be pulled apart and providing tension to pull his arms together, and that he "thought it might turn violent." Nothing in Plaintiffs' cited testimony disputes that Andy continued to resist

	suspicion.	after Gendreau arrived. Further, Mark
	Supporting Evidence: Exhibit C,	Zimmerman testified that Officer
	Deposition of Richard Gendreau, pp.	Gendreau did assist Officer
	175: 1-25, 176: 1-25, 177: 1-5,206: 19-	Karschamroon by putting "his hands on
	25; Exhibit B, Deposition of Daniel	Andy's hands or on the other officer's
	Karschamroon, pp. 285: 11-13;	hands or in that vicinity" for "about 20
	Karschamroon GGPD Internal Affairs	seconds" in what appeared to him as an
	Interview, pp. 9.	effort to "keep more control" of Andy.
		Karschamroon Depo., 321:22-322:22,
		280:12-23, 362:12-17, 366:14-19,
		Zimmerman Depo., 92:19-25, 93:16-
		19, 209:7-22
131 To prevent a possible escape,	131. Disputed: Officer Karschamroon	113. Plaintiffs do not dispute any
Officer Gendreau moved in front of	testified he was a foot from Andy and	material fact precluding summary
Andy. From that position, he could see	1-3 feet from Gendreau and He never	judgment. The assertion that Andy did
that Andy was shaking and he began to	heard Andy growl or see his foaming at	not try to escape does dispute Officer
growl. Andy was not blinking, his	the mouth, or see Andy shaking other	Gendreau's motivation for positioning
pupils appeared to be dilated, and he	than when Karschamroon shook Andy	himself in front of Andy. Further,
had saliva coming from the corner of	hands, which moved, to let Andy know	Officer Karschamroon was positioned
his mouth, almost as though he was	he was still behind him. Gendreau	behind Andy, and was not in a position
foaming at the mouth. Officer	testified he never feared Andy would	to see Andy's face at the time he was

Gendreau felt like Andy was looking	flee or run. Karschamroon testified	tased. As to the issue of Andy
straight through him.	Andy never made a movement	growling, Mark Zimmerman testified
131. Karschamroon Decl., ¶ 16	consisting with fleeing or running away	that although he never saw Andy's lips
Gendreau Decl., ¶¶ 10, 11	Supporting Evidence: Exhibit B,	moving, he heard some audible things
	Deposition of Daniel Karschamroon,	coming out of his mouth. Zimmerman
	pp. 261: 12-18, 264: 17-20, 284: 1-25,	also testified that he could see subtle
	285: 1-6, 330: 11-15; Declaration of	movement going on between the
	Daniel Karschamroon, pp. 384: 18,	officers and Andy and that there could
	385: 1-5; Exhibit C, Deposition of	have been a "whole 'nother [sic] set of
	Richard Gendreau, pp. 174: 14-17;	scenarios going on" that he did not see.
	176: 1-25, 177: 1-10,182: 2-23,187: 1-	Karschamroon Depo., 348:9-15,
	8,220: 1-24, 225: 17-24, 266: 1-10.	355:16-19, Zimmerman Depo., 217:3-
		9, 222:11-223:13, 276:22-25.
132. In a casual manner, Officer	132. Disputed: Officer Karschamroon	132. Plaintiffs do not dispute
Gendreau said words to the effect of,	testified the only thing he heard	Defendants' UMF that the officers
"Hey, dude, just calm down," and	Gendreau say was "Hey, dude, calm	attempted to relax and calm Andy while
advised Andy to relax, put his hands	down." Gendreau never ackowledged	attempting to secure him, but rather
behind his back, and that "we're not	he said "dude calm down".	dispute the exact words spoken. This
here to hurt you." Officer	Karschamrron testified Gendreau never	does not create a genuine issue of
Karschamroon was reminding Andy to	told Andy to put his hands behind his	material fact precluding summary

relax as well, but he was also shaking	back and the only shaking he saw from	judgment. Further, it is immaterial that
Andy's still clenched hands to let him	Andy was Karschamroon shaking	Officer Karschamroon may not have
know he still needed to be handcuffed.	Andy to let him know he was there.	said anything to Andy about being
132. Karschamroon Decl., $\P\P$ 19, 20;	Karschamroon testifed he never said	handcuffed since the act of attempting
Gendreau Decl., $\P\P$ 12, 13	anything to Andy about being	to handcuff him established the
	handcuffed.	officer's intention. Officer
	Supporting Evidence: Exhibit B,	Karschamroon's deposition testimony
	Deposition of Daniel Karschamroon,	that Andy was not allowing his arms to
	pp. 282, 345: 1-18, 268: 19-23, 269: 1-	be pulled apart and was providing
	4; 419, Exhibit B, Deposition of Daniel	tension to pull his arms together
	Karschamroon, pp. 328: 1-7,330: 11-	demonstrates resistance to that
	15/17-25, 337: 10-16, 340: 8-9, 341: 7-	intention.
	16.	Karschamroon Depo., 321:22-322:22,
		280:12-23, 362:12-17, 366:14-19
133. Andy continued to ignore the	133. Disputed: Gendreau said he did	133. Plaintiffs do not dispute any
officers' orders, and concern grew that	not believe Andy understood anything	material fact precluding summary
the dangling handcuff could be used as	he said so how can he claim Andy	judgment and mischaracterize
a weapon if Andy decided to swing his	ignored an order? Further,	testimony. Officer Karschamroon did
arm. Both officers then attempted to	Karschamroon testified that neither	not testify that "relax" and "calm
pry Andy's arms down but could not	"relax" or "dude calm down" were	down" were not lawful orders.
overcome his flexed/locked position. A	lawful orders. Both Karshamroon and	Although he did testify he had not

pain compliance technique performed by Officer Gendreau did nothing.

133. Karschamroon Decl., $\P\P$ 21, 22; Gendreau Decl., $\P\P$ 12, 14-16 Zimmennan said Gendreau never struggled with Andy except to taser him. Karschamroon testified repeatedly he never saw Gendreau touch Andy and did not struggle either alone or with Gendreau to get Andy's ann behind his back.

Karschamroon testified he always had ahold of the loose handcuff so it could not be dangling and used as a weapon. Again, given the many new statements which are completely inconsitent with statements made to Internal Affairs and during Deposition testimony puts the credibilty of Karschamroon and Gendreau is great doubt and their Declarations should be viewed with extreme caution.

Supporting Evidence: Exhibit B, Deposition of Daniel Karschamroon, pp. 273: 8-11, 274, 292: 17-23, 293: 1, received training that such commands were lawful orders, he stated that the commands given were appropriate given the goal of relaxing Andy. Officer Karschamroon also stated in his deposition that Andy was "actively resisting" by not allowing his arms to be pulled apart and providing tension to pull his arms together, and that he "thought it might turn violent." Nothing in Plaintiffs' cited testimony disputes that Andy continued to resist after Gendreau arrived. Further, Mark Zimmerman testified that Officer Gendreau did assist Officer Karschamroon by putting "his hands on Andy's hands or on the other officer's hands or in that vicinity" for "about 20 seconds" in what appeared to him as an effort to "keep more control" of Andy. Nothing in Zimmerman's testimony

331: 16-25, 332: 18-21, 333: 7-11;

Karschamroon GGPD Internal Affairs
Interview, pp. 7-8.; Exhibit A,
Deposition of Mark Zimmerman, pp.
79:11-20,80: 10-16, 81: 4-5, 83: 1825,85:1-10,87: 3-7/16-23,97: 5-6, 100:
1-25, 102: 4-9/20-24,150: 20-25, 151:
9-11, 197:20-25,198: 1-5,209:2325,222:17-25,224: 6-12, 276: 1020,277: 1-4, 278: 18-21.

disputes the officers' account of Andy's resistance other than his own speculation. Zimmerman testified that he could see subtle movement going on between the officers and Andy and that there could have been a "whole 'nother [sic] set of scenarios going on" that he did not see. He could not hear what was being said, and although his eyesight is admittedly impaired, he never wears his prescription contact lens. Zimmerman observed the incident from a distance of approximately 40-50 feet could not tell what small, detailed movements were occurring. He does not know whether the officers tried to move Andy's hands from the top of his head, and admits that many things could have been said or done which he could not observe or hear. While Zimmerman testified that

		Andy's hands were on his head at all
		times, he cannot say whether there was
		any kind of struggle
		Karschamroon Depo., 321:22-322:22,
		280:12-23, 283:20-284:20, 362:12-17,
		366:14-19, Zimmerman Depo., 22:3-7,
		82:11-18, 92:19-25, 93:16-19, 96:2-10,
		100:7-20, 162:11-19, 187:3-11,
		200:11-24, 201:6-12, 209:7-22, 217:3-
		9, 222:11-223:13, 276:22-25, 287:25-
		288:12.
134. Officer Gendreau thought that if a	134. Disputed: Karschamroon and	134. Plaintiffs' evidence does not
fight ensued, it was going to be a bad	Zimmerman both testified Gendreau	dispute any material fact. Plaintiffs
one given the strength that Andy had	never struggled to force Andy's hands	ignore Officer Karschamroon's
exhibited when resisting both officers	behind back. Karschamroon said	testimony that when a handcuff was
attempt to lower his arms. Officer	Gendreau never touched Andy.	placed on Andy's right wrist, Andy
Karschamroon was similarly concerned	Karschamroon testified when he shook	"tensed" and Officer Karschamroon
about officer safety.	Andy's hands they moved so the	"could feel his fingers closing, kind of
134. Karschamroon Decl., ¶ 21;	extraordinary strength Gendreau said	curling up from that interlocked
Gendreau Decl., ¶ 19	Andy had is disputed by	position" and "close up as if the fingers
	Karschamroon.	were curling." Officer Karschamroon

Supporting Evidence: Exhibit B,
Deposition of Daniel Karschamroon,
pp.273: 8-11,274, 292: 17-23, 293: 1,
331: 16-25, 332: 18-21, 333: 7-11;
Karschamroon GGPD Internal Affairs
Interview, pp. 7-8.; Exhibit A,
Deposition of Mark Zimmerman,
pp.79: 11-20, 80: 10-16, 81:4-5, 83:
18-25, 85: 1-10, 87: 3-7/16-23, 97: 5-6,
100: 1-25, 102: 4-9/20-24, 150: 20-25,
151: 9-11, 197:20-25, 198: 1-5, 209
:23-25, 222: 17-25, 224: 6-12, 276: 1020, 277: 1-4, 278: 18-21.

also stated in his deposition that Andy was "actively resisting" by not allowing his arms to be pulled apart and providing tension to pull his arms together, and that he "thought it might turn violent." Nothing in Plaintiffs' cited testimony disputes that Andy continued to resist after Gendreau arrived. Further, Mark Zimmerman testified that Officer Gendreau did assist Officer Karschamroon by putting "his hands on Andy's hands or on the other officer's hands or in that vicinity" for "about 20 seconds" in what appeared to him as an effort to "keep more control" of Andy. Nothing in Zimmerman's testimony disputes the officers' account of Andy's resistance other than his own speculation. Karschamroon Depo., 321:22-322:22, 280:12-23, 362:12-17, 366:14-19,

		Zimmerman Depo., 22:3-7, 82:11-18,
		92:19-25, 93:16-19, 96:2-10, 100:7-20,
		162:11-19, 187:3-11, 200:11-24,
		201:6-12, 209:7-22, 217:3-9, 222:11-
		223:13, 276:22-25, 287:25-288:12.
135. As Andy continued to resist	135. Disputed: Karschamroon	135. Plaintiffs do not dispute any
officer commands by remaining rigid	testified after he told Andy to interlock	material fact precluding summary
and non-responsive, Officer Gendreau	his fingers Andy was only told to	judgment and mischaracterize
decided to take out his Taser. Andy	relax or "dude calm down" which	testimony. Officer Karschamroon
was informed several times that if he	Karschamroon testified were not lawful	testified that Officer Gendreau did warn
did not comply, he would be tased.	orders. Gendreau testified he did pot	Andy that he would be tased if he did
Andy continued to resist, so Officer	believe Andy understood anything he	not calm down, and Zimmerman
Gendreau deployed his taser once in	said so it would be difficult for him to	testified that Officer Gendreau had his
Andy's thigh for a cycle of five	"resist" non lawful "commands".	hands on top of Andy's hands for about
seconds.	Karschamroon testified Gendreau told	20 seconds before stepping to the side
135. Karschamroon Decl., $\P\P$ 22-25;	him "Danny I'm just going to Tase	to taser him.
Gendreau Decl., ¶¶ 20-23	him" and Karschamroom testified	Karschamroon Depo., 331:6-12,
	Gendreau never told Andy he was	Zimmerman Depo., 208:8-209:17
	going to be tasered. Zimmerman said	
	Gendreau stepped to Andy's side and	
	immediatly tasered him.	

	Supporting Evidence: Exhibit A,	
	Deposition of Mark Zimmerman, pp.	
	108: 1-11/18-24, 110: 1-13/22-25, 111:	
	10-17/18-22, 112: 25, 121: 6-11/15-24,	
	123: 15-25, 240: 21-25, 242: 13-25,	
	243: 11-16, 244: 12-15, 246: 7-19;	
	Exhibit B, Deposition of Daniel	
	Karschamroon, pp. 397: 7-8; Exhibit D,	
	Deposition of Richard Fukumoto,	
	M.D., pp. 90: 13-16, 258: 16-19, 259:	
	2-23, 260: 1-10, 261: 13-15, 264: 21-	
	24, 266: 13-22, 268:6-22, 280: 19-25,	
	281: 10-25, 282: 7-15, 283: 4-16/21-	
	23; Exhibit E, Deposition of Bua Thi	
	Phan, pp. 243.1: 16-18; 256.1: 2-5.	
136. Prior to deploying the taser,	136. Disputed: GGPD General Order	136. Plaintiffs do not dispute any
Officer Gendreau also attempted to	5.31 states the IVS Unit must be	material fact precluding summary
activate his audio recording system and	activated when a detention was going	judgment. The General Orders are
the one in his police unit, although he	to occur. Gendreau testified he saw	simply "guidelines," and the purpose of
was too far away for remote avtivation.	Karschamroon detaining Andy when he	the In-Car Video System (IVS) is to
Based on the nature of the call and	arrived yet failed to activate his IVS	provide an accurate, unbiased

rapidly evolving events, activating a recorder or his in-unit video during this incident was "not at the forefront" of Officer Karschamroon's thoughts.

136. Karschamroon Decl., ¶ 41;

Gendreau Decl., ¶ 20

Unit; Karschamroon testified he thought IVS Unit activation was completely within his discretion. No where in the GGPD General Orders does it indicate "rapidly evolving events" warrant ignoring orders. The fact Gendreau claims to have attempted to activate his IVS Unit shows he had time and should have called for a supervisor and medics before tasering Andy as required by GGPD General Order 2.25. Further, given the major credibility issues of all involved officers Plaintiffs do not believe the Court should not accept the IVS recordings were destroyed. GGPD General Order 5.31 states if IVS fails to activate a work order must be completed and Gendreau never did the required paperwwork.

audiovisual record of enforcement related and non-criminal incidents that will enhance criminal prosecutions and limit civil liabilities. The policy is nonpunitive in nature, and no disciplinary action for violations of this policy will be proposed unless the employee refuses either actively or passively, as demonstrated by repeated instances of his/her failure. ummoning Fire Department Paramedics before the use of a Taser is only recommended, if practical, under the circumstances. General Order 2.24, 5.31, General Order, "Statement by the Chief of Police"

Supporting Evidence: Exhibit C,

	Deposition of Richard Gendreau, pp.	
	97-98, 109: 20-23; Exhibit H, GGPD	
	General Order 2.24, 5.31.	
137. Officer Gendreau was trained that	137. Disputed: Gendreau testified he	137. Plaintiff's evidence does not
one of the best ways to get a subject on	believed that Andy was under the	constitute a genuine issue of material
the ground is to tase them in the leg.	influence of a Central Nervous System	fact precluding summary judgment; it is
His goal was to take Andy into custody	stimulant before he tasered Andy and	immaterial in light of Andy's actual
without any further risk of injury to	knew and had been trained that tasering	resistance while being detained, and the
Andy, Officer Karschamroon or	Andy could cause his immediate death.	totality of the circumstances
himself.	Given theses facts it is difficult to	confronting the officers during that
137. Gendreau Decl., ¶ 22	believe Gendreau did not believe to	detention. Officer Karschamroon
	injure Andy. Further, GGPD General	testified that he did not feel it was
	Orders state a medic and supervisor	necessary to take out any weapon only
	should be called prior to tasering a	up to the point of placing the first
	subject. Gendreau testified he tried to	handcuff on Andy's wrist. Officer
	activate his IVS and Lux testified it	Gendreau testified that Andy's conduct
	would have take 1-3 seconds to call for	and appearance was indicative of
	a medic and supervisor. Gendreau said	someone who potentially is going to
	Andy was not resisting, being	throw a punch. Plaintiffs' misrepresent
	aggressive or looking like would flee	the testimony of Benedict Lux, which
	when he wass tasered so there was no	was based on incomplete hypothetical

rush to taser Andy. Andy was therefore a non comabative subject per GGPD General Order 2.6 and Lux testified he trained his students including Gendreau not taser such subjects.

Karschamroon testified he saw no reason to take out any weapons against Andy and had no idea why Gendreau was tasering Andy. Lux testified Karshamroon as the first officer on scene should have detennined why Gendreau was going to taser Andy.

Supporting Evidence: Exhibit B,

pp. 251: 17-25, 252: 1-118, 355: 21-24,

Deposition of Daniel Karschamroon,

357: 3-18, 360: 1-6; Exhibit C,

Deposition of Richard Gendreau, pp.

96: 1-16,174: 14-17; 176: 1-25, 177: 1-

10, 182: 2-23, 187: 1-8, 220: 1-24, 225:

17-24, 266: 1-10, 327: 17-22, 328: 1-

14/20-25, 329: 1-18; Exhibit F,

questioning and not on facts relevant to this case.

Karschamroon Depo., 251:21-252:6, Gendreau Depo., 178:5-16.

	Deposition of Benedict Lux, pp. 176:	
	15-22,177:7-20,178:5-14,179: 5-12,	
	204: 1-25, 205: 1-15, 206: 9-22, 209:	
	1-25, 210: 8-18, 211: 9-11, 212: 13-18,	
	244: 14-25, 247: 21-25, 252: 21-25, pp.	
	253: 1-3/5-12, 254, 255: 1-5/12-15;	
	Exhibit H, GGPD General Order 2.24,	
	2.6; Exhibit J, Karschamroon GGPD	
	Internal Affairs Interview, pp. 15.	
138. Once Andy was tased, he began to	138. Disputed: Zimmerman testified	138. Plaintiff's evidence does not
fall backward toward Officer	Andy fell hard to the ground after the	constitute a genuine issue of material
Karschamroon, who caught him and	tasering like a "sack of potatoes" and	fact precluding summary judgment; it is
laid him forward onto the ground.	saw nothing consistent with Andy	immaterial in light of Andy's actual
Andy also released his grip, and once	being gently placed on the ground.	resistance while being detained, and the
the taser cycle stopped, the officers	Zimmeman testified Andy was a fat	totality of the circumstances
were able to bring his left arm behind	guy and the officers could not have	confronting the officers during that
his back and apply the other handcuff to	placed him gently down if they wanted.	detention. Zimmerman has had no
secure his arms.	Zimmerman testified when Andy hit	medical training. Although his eyesight
138. Karschamroon Decl., ¶ 26;	the ground was dead and never moved	is admittedly impaired, he never wears
Gendreau Decl., $\P\P$ 24, 25	again on his own.	his prescription contact lens.
	Supporting Evidence: Exhibit A,	Zimmerman observed the incident from

	Deposition of Mark Zimmerman, pp.	a distance of approximately 40-50 feet
	108: 1-11/18-24, 110: 1-13, 240: 21-	and could not tell what small, detailed
	25, 242: 13-25,243: 11-16.	movements were occurring.
		Zimmerman testified that it was
		possible that Andy was breathing after
		being tased and that he just did not
		observe it, and that his belief that Andy
		was dead is not based on any actual
		evidence
		Zimmerman Depo., pp. 22:3-7, 162:11-
		19, 180:20-21; 201:6-12, 293:23-
		294:12
139. At approximately 11:38 a.m.,	139. Disputed: GG Fire Department	139. Plaintiff's evidence does not
Officer Gendreau advised over his	paramedics were not dispached until	constitute a genuine issue of material
police radio that the situation was	11:39:38. Per Lux and GGPD General	fact precluding summary judgment; it
stable, but that Andy had been tased and	Order 2.24 states medics should be	remains undisputed that GG Fire
he requested Garden Grove Fire	called before any tasering and a	Department paramedics were promptly
Department to respond to examine	supervisor must be called before a	dispatched after Andy was tased.
Andy per their protocol when a subject	tasering. Sergeant Wagner was not	General Orders are guidelines and not
is tased. At approximately 11:39 a.m.,	requested until 11:46.	an independent mechanism to pursue
Garden Grove Fire Department was	Supporting Evidence: Exhibit D,	civil liability.

dispatched to the incident scene in	Deposition of Richard Fukumoto,	General Orders, "Statement by the
reference to Andy being tased.	M.D., pp. 90: 13-16, 282: 7-15, 283:4-	Police Chief"
139. Karschamroon Decl., ¶ 27;	16/21-23; Exhibit F, Deposition of	
Gendreau Decl., ¶ 26; Exhibit 3	Benedict Lux, pp. 249: 15-25, 250: 9-	
Dispatch CAD	10, 260: 13-25, 262: 15-25, 263: 1-3;	
	Exhibit H, GGPD General Order 2.24;	
	Exhibit K., Sergeant Wagner's report.	
140. As he was handcuffed and on the	140. Disputed: Zimmerman testified	140. Plaintiff's evidence does not
ground, Andy looked in various	Andy fell hard to the ground after the	constitute a genuine issue of material
directions. Officer Gendreau continued	tasering like a "sack of potatoes" and	fact precluding summary judgment; it is
to instruct him to relax, and informed	saw nothing consistent with Andy	immaterial in light of the undisputed
him they were in the process of getting	being gently placed on the ground.	fact that GG Fire Department
him medical attention. When asked if	Zimmeman testified Andy was a fat	Paramedics were promptly summoned.
he was doing okay, Andy remained	guy and the officers could not have	In any event, Zimmerman has had no
unresponsive but continued to look	placed him gently down if they wanted.	medical training, and although his
around.	Zimmerman testified when Andy hit	eyesight is admittedly impaired, he
140. Karschamroon Decl., ¶ 30;	the ground was dead and never moved	never wears his prescription contact
Gendreau Decl., ¶ 27	again on his own. Karschamroon	lens. Zimmerman observed the
	testifed Gendreau opened up Andy's	incident from a distance of
	eyes and Karschamroon could not tell	approximately 40-50 feet and could not
	if Andy was breathing. Zimmerman	tell what small, detailed movements

said he saw Gendreau slapping Andy's face and saying "to stop faking". Bua Phan also testified Andy died immediately after the tasering. Dr. Fukumoto testified the evidence is consistent with Andy being dead immediately after he saw tasered. Supporting Evidence: Exhibit A, Deposition of Mark Zimmerman, pp. 108: 1-11/18-24, 110: 1-13/22-25, 111: 10-17/18-22, 112: 25, 121: 6-11/15-24,123: 15,- 25, 240: 21-25, 242: 13-25, 243: 11-16,244: 12-15,246: 7-19; Exhibit B, Deposition of Daniel Karschamroon, pp. 397: 7-8; Exhibit D, Deposition of Richard Fukumoto, M.D., pp. 90: 13-16, 258: 16-19, 259:2-23, 260: 1-10, 261: 13-15, 264: 21-24, 266: 13-22, 268:6-22, 280: 19-25, 281: 10-25, 282: 7-15, 283: 4-16/21-23; Exhibit E, Deposition of Bua Thi Phan,

were occurring. Zimmerman testified that it was possible that Andy was breathing after being tased and that he just did not observe it, and that his belief that Andy was dead is not based on any actual evidence. Dr. Fukumoto testified that he has no way of knowing when Andy died and that he relies on the physician's death pronouncement as to the time of death.

141. After the tasing, a third officer arrived on scene, Officer Amir El-Farra. The officers decided to roll Andy over on his back to observe him from the front. His eyes were closed, but a check by Officer Gendreau found they were dilated. Because of that and Andy's labored breathing, the officers decided to sit him up against Officer El-Farra's leg, thinking it might help with his breathing and help snap him out of the trance he appeared to be in.

141. Karschamroon Decl., $\P\P$ 29-34; Gendreau Decl., $\P\P$ 31-32; El-Farra Decl., $\P\P$ 6-8

pp. 243.1: 16-18; 256.1: 2-5.

141. **Disputed:** Zimmerman testified Andy fell hard to the ground after the tasering like a "sack of potatoes" and saw, nothing consistent with Andy being gently placed on the ground. Zimmeman testified Andy was a fat guy and the officers could not have placed him gently down if they wanted. Zimmerman testified when Andy hit the ground was dead and never moved again on his own. Zimmerman testified when the police rolled Andy against an officers legs he could clearly see Andy chest and stomach and he was clearly not breathing. Karschamroon testifed Gendreau opened up Andy's eyes and Karschamroon could not tell if Andy was breathing. Zimmerman said he saw Gendreau slapping Andy's face and saying "to stop faking". Bua Phan also

141. Plaintiff's evidence does not constitute a genuine issue of material fact precluding summary judgment; it is immaterial in light of the undisputed fact that GG Fire Department Paramedics were promptly summoned. In any event, Zimmerman has had no medical training, and although his eyesight is admittedly impaired, he never wears his prescription contact lens. Zimmerman observed the incident from a distance of approximately 40-50 feet and could not tell what small, detailed movements were occurring. Zimmerman testified that it was possible that Andy was breathing after being tased and that he just did not observe it, and that his belief that Andy was dead is not based on any actual evidence. Dr. Fukumoto

	testified Andy died immediately after	testified that he has no way of knowing
	the tasering.	when Andy died and that he relies on
	Dr. Fukumoto testified the evidence is	the physician's death pronouncement as
	consistent with Andy being dead	to the time of death.
	immediately after he saw tasered.	Zimmerman Depo., 22:3-7, 162:11-19,
	ř	•
	Supporting Evidence: Exhibit A,	180:20-21; 201:6-12, 293:23-294:12;
	Deposition of Mark Zimmennan, pp.	Fukumoto Depo., 187:19-188:5,
	108: 1-11/18-24, 110: 1-13/22-25, 111:	258:7-259:25
	10-17/18-22,112: 25, 121: 6-11/15-24,	
	123: 15-25; 240: 21-25; 242: 13-25,	
	243: 11-16, 244: 12-15, 246: 7-19;	
	Exhibit B, Deposition of Daniel	
	Karschamroon, pp. 397: 7-8; Exhibit D,	
	Deposition of Richard Fukumoto,	
	M.D., pp. 90: 13-16, 258: 16-19, 259:	
	2-23, 260: 1-10, 261: 13-15, 264: 21-	
	24,266: 13-22, 268:6-22, 280: 19-25,	
	281: 10-25, 282: 7-15, 283: 4-16/21-	
	23; Exhibit E, Deposition of Bua Thi	
	Phan, pp. 243.1: 16-18; 256.1: 2-5.	
142. Given Andy's dilated pupils in	142. Disputed: Gendreau testified he	142. Plaintiff's evidence does not

bright sunlight and his rapid pulse,
Officer Gendreau did consider that he
may be under the influence of a
controlled substance, but he never had
the opportunity to do a full evaluation.

142. Gendreau Decl., ¶ 37

believed that Andy was under the influence of a Central Nervous System stimulant before he tasered Andy and knew and had been trained that tasering Andy could cause his immediate death. Given theses facts it is difficult to believe Gendreau did not believe to injure Andy. Further, GGPD General Orders state a medic and supervisor should be called prior to tasering a subject. Gendreau testified he tried to activate his IVS and Lux testified it would have take 1-3 seconds to call for a medic and supervisor. Gendreau said Andy was not resisting, being aggressive or looking like would flee when he wass tasered so there was no rush to taser Andy. Andy was therefore a non comabative subject per GGPD General

constitute a genuine issue of material fact precluding summary judgment; it is immaterial in light of Andy's actual resistance while being detained, and the totality of the circumstances confronting the officers during that detention. Officer Karschamroon testified that he did not feel it was necessary to take out any weapon only up to the point of placing the first handcuff on Andy's wrist. Officer Gendreau testified that Andy's conduct and appearance was indicative of someone who potentially is going to throw a punch. Plaintiffs' misrepresent the testimony of Benedict Lux, which was based on incomplete hypothetical questioning and not on facts relevant to this case.

Karschamroon Depo., 251:21-252:6,

Order 2.6 and Lux testified he trained

his students including Gendreau not taser such subjects. Karschamroon testified he saw no reason to take out any weapons against Andy and had no idea why Gendreau was tasering Andy. Lux testified Karshamroon as the first officer on scene should have detennined why Gendreau was going to taser Andy. Supporting Evidence: Exhibit B, Deposition of Daniel Karschamroon, pp. 251: 17-25, 252: 1-118, 355: 21-24, 357: 3-18, 360: 1-6; Exhibit C, Deposition of Richard Gendreau, pp. 96: 1-16,174: 14-17; 176: 1-25, 177: 1-10, 182: 2-23, 187: 1-8, 220: 1-24, 225: 17-24, 266: 1-10, 327: 17-22, 328: 1-14/20-25, 329: 1-18; Exhibit F, Deposition of Benedict Lux, pp. 176: 15-22,177:7-20,178:5-14,179: 5-12, 204: 1-25, 205: 1-15, 206: 9-22, 209:

	1-25, 210: 8-18, 211: 9-11, 212: 13-18,	
	244: 14-25, 247: 21-25, 252: 21-25, pp.	
	253: 1-3/5-12, 254, 255: 1-5/12-15;	
	Exhibit H, GGPD General Order 2.24,	
	2.6; Exhibit J, Karschamroon GGPD	
	Internal Affairs Interview, pp. 15.	
143. As Andy was seated upright and	143. Disputed: Zimmerman testified	143. Plaintiff's evidence does not
leaning against Officer El-Farra's leg,	Andy fell hard to the ground after the	constitute a genuine issue of material
his breathing was observed to be	tasering like a "sack of potatoes" and	fact precluding summary judgment; it is
labored but no officer believed the	saw, nothing consistent with Andy	immaterial in light of the undisputed
situation to be critical. Officer	being gently placed on the ground.	fact that GG Fire Department
Karschamroon saw nothing to suggest a	Zimmeman testified Andy was a fat	Paramedics were promptly summoned.
life-threatening situation, Officer	guy and the officers could not have	In any event, Zimmerman has had no
Gendreau "felt comfortable" upon	placed him gently down if they wanted.	medical training, and although his
hearing the approach of the medics, and	Zimmerman testified when Andy hit	eyesight is admittedly impaired, he
Officer El-Farra could see Andy's chest	the ground was dead and never moved	never wears his prescription contact
rising and falling.	again on his own. Zimmerman testified	lens. Zimmerman observed the
143. Karschamroon Decl., ¶ 35;	when the police rolled Andy against an	incident from a distance of
Gendreau Decl., ¶¶ 33-34; El-Farra	officers legs he could clearly see Andy	approximately 40-50 feet and could not
Decl., ¶¶10	chest and stomach and he was clearly	tell what small, detailed movements
	not breathing. Karschamroon testifed	were occurring. Zimmerman testified

Gendreau opened up Andy's eyes and Karschamroon could not tell if Andy was breathing. Zimmerman said he saw Gendreau slapping Andy's face and saying "to stop faking". Bua Phan also testified Andy died immediately after the tasering.

Dr. Fukumoto testified the evidence is consistent with Andy being dead immediately after he saw tasered.

Dr. Fukumoto also testified that if officers did see labored or heavy breathing they should have known

Andy was in cardiad distress and taken off the handcuffs at a minimum.

Supporting Evidence: Exhibit A, Deposition of Mark Zimmerman, pp.108: 1-11/18-24, 110: 1-13/22-25, 111: 10- 17/18-22, 112: 25, 121: 6-

11/15-24, 123: 15-25, 240: 21-25, 242:

13-25, 243: 11-16, 244: 12-15, 246: 7-

that it was possible that Andy was breathing after being tased and that he just did not observe it, and that his belief that Andy was dead is not based on any actual evidence. Dr. Fukumoto testified that he has no way of knowing when Andy died and that he relies on the physician's death pronouncement as to the time of death.

	19; Exhibit B, Deposition of Daniel	
	Karschamroon, pp. 397: 7-8; Exhibit D,	
	Deposition of Richard Fukumoto,	
	M.D., pp. 90: 13-16, 258: 16-19, 259:	
	2-23, 260: 1-10, 261: 13-15, 264: 21-	
	24, 266: 13-22, 268:6-22, 280: 19-25,	
	281: 10-25, 282: 7-15, 283: 4-16/21-	
	23; Exhibit E, Deposition of Bua Thi	
	Phan, pp. 243.1: 16-18; 256.1: 2-5.	
144. Officer Gendreau asked Officer	144. Zimmerman testified all police	144. Plaintiff's evidence does not
El-Farra to stay with Andy as he and	officers arrived outside until the	constitute a genuine issue of material
Officer Karschamroon ascertained the	paramedics arrived looking	fact precluding summary judgment; it is
welfare or condition of the calling party	increasingly more concerned because	immaterial in light of the undisputed
or family considering the nature of the	Andy was not moving. Per Exhibit 3	fact that GG Fire Department
call and the need to determine if anyone	of Defendants Motion El-Farra was on	Paramedics were promptly summoned.
had been injured or attacked by Andy.	scene at 11:38 and Paramedics did not	In any event, Zimmerman "thinks"
Officer El-Farra estimates that he was	arrive until 11:44 so El-Farra was on	Officers Karschamroon and Gendreau
in front of the residence, with Andy, for	scene for several minutes prior to the	remained with Andy until the
approximately 15 to 20 seconds	paramedics arrival.	paramedics arrived but concedes he lost
thereafter prior to medics arriving.	Supporting Evidence: Exhibit A,	track of them.
144. Karschamroon Decl., ¶¶ 35-36;	Deposition of Mark Zimmerman, pp.	

Gendreau Decl., ¶ 33-34; El-Farra	123: 15-25,246: 7-19, 251: 4, 264: 18-	Zimmerman Depo., 264:18-23, 267:12-
Decl., ¶ 11-12	25,265: 5-14118-25,267: 6-8.; Defense	14, 307:21-25
	Exhibit 3, Dispatch CAD.	
145. Officers Gendreau and	145. Disputed: Zimmerman testified	145. Plaintiff's evidence does not
Karschamroon then contacted Andy's	all police officers arrived outside until	constitute a genuine issue of material
family inside the residence, but it	the paramedics arrived looking	fact precluding summary judgment; it is
appeared the only individual who	increasingly more concerned because	immaterial in light of the undisputed
sustained an injury was Plaintiff Bua	Andy was not moving. Per Exhibit 3 of	fact that GG Fire Department
Thi Phan, who had sustained a scraped	Defedants Motion EI-Farra was on	Paramedics were promptly summoned.
elbow. Her injury was measured and	scene at 11:38 and Paramedics did not	In any event, Zimmerman "thinks"
photographed.	arrive until 11:44 so EI-Farra was on	Officers Karschamroon and Gendreau
145. Karschamroon Decl., ¶¶37-38;	scene for minutes prior to the	remained with Andy until the
Gendreau Decl., ¶ 35; Exhibit 4,	paramedics arrival. There has been no	paramedics arrived but concedes he lost
Photograph of Injury; Exhibit 5,	testimony by Karschamroon or	track of them. Further, Plaintiffs do not
Photograph of Screen	Gendreau that they ever personally	deny that Bua Thi Phan was injured in a
	observed any injury nor photographed	struggle with Andy.
	any injury to Bua Phan so there is a	Zimmerman Depo., 264:18-23, 267:12-
	complete lack of foundation for this	14, 307:21-25
	"new" testimony. Again, another	
	example of recreating history by	
	Karschamroon and Gendreau and	

	another reason to disbelieve both of	
	their Declarations. Further, the attached	
	photographs were submitted late and	
	beyond the Motion Cut-Off time.	
	Supporting Evidence: Exhibit A,	
	Deposition of Mark Zimmerman, pp.	
	123: 15-25,246: 7-19, 251: 4,264: 18-	
	25,265: 5-14/18-25,267: 6-8.; Defense	
	Exhibit 3, Dispatch CAD.	
146. An approaching medic was	146. Disputed: Zimmerman testified	146. Plaintiff's evidence does not
informed by Officer El-Farra about the	Andy fell hard to the ground after the	constitute a genuine issue of material
tasing and Andy's labored breathing.	tasering like a "sack of potatoes" and	fact precluding summary judgment; it is
The medic checked for Andy's pulse	saw nothing consistent with Andy	immaterial in light of the undisputed
and informed Officer El-Farra that he	being gently placed on the ground.	fact that GG Fire Department
needed to start CPR. This took Officer	Zimmerman testified Andy was a fat	Paramedics were promptly summoned.
El-Farra completely by surprise. When	guy and the officer could not have	In any event, Zimmerman has had no
he had looked away from Andy to	placed him gently down if they wanted.	medical training, and although his
speak to the medic, Andy had been	Zimmerman testified when Andy hit	eyesight is admittedly impaired, he
breathing. At no time did Officer El-	the ground was dead and never moved	never wears his prescription contact
Farra hear or see Andy stop breathing,	again on his own. Zimmerman testified	lens. Zimmerman observed the
or notice any other physical difficulties.	when the police rolled Andy against an	incident from a distance of

146. El-Farra Decl., ¶ 13-17

officers legs he could clearly see Andy chest and stomach and he was clearly not breathing. Karschamroon testified Gendreau opened up Andy's eyes and Karschamroon could not tell if Andy was breathing. Zimmerman said he saw Gendreau slapping Andy's face and saying "to stop faking". Bua Phan also testified Andy died immediately after tasering.

Dr. Fukumoto testified the evidence is consistent with Andy being dead immediately after he saw tasered.

Dr. Fukumoto also testified that if officers did see labored or heavy breathing they should have known

Andy was in cardiad distress and taken off the handcuffs at a minimum.

Supporting Evidence: Exhibit A, Deposition of Mark Zimmerman, pp.108: 1-11/18-24, 110: 1-13/22-25,

approximately 40-50 feet and could not tell what small, detailed movements were occurring. Zimmerman testified that it was possible that Andy was breathing after being tased and that he just did not observe it, and that his belief that Andy was dead is not based on any actual evidence. Dr. Fukumoto testified that he has no way of knowing when Andy died and that he relies on the physician's death pronouncement as to the time of death.

	111: 10- 17/18-22, 112: 25, 121: 6-	
	11/15-24, 123: 15-25, 240: 21-25, 242:	
	13-25, 243: 11-16, 244: 12-15, 246: 7-	
	19; Exhibit B, Deposition of Daniel	
	Karschamroon, pp. 397: 7-8; Exhibit D,	
	Deposition of Richard Fukumoto,	
	M.D., pp. 90: 13-16, 258: 16-19, 259:	
	2-23, 260: 1-10, 261: 13-15, 264: 21-	
	24, 266: 13-22, 268:6-22, 280: 19-25,	
	281: 10-25, 282: 7-15, 283: 4-16/21-	
	23; Exhibit E, Deposition of Bua Thi	
	Phan, pp. 243.1: 16-18; 256.1: 2-5.	
147. After checking the house, the	147. Zimmerman testified all police	147. Plaintiff's evidence does not
Officers Gendreau and Karschamroon	officers arrived outside until the	constitute a genuine issue of material
started toward the front door. They	paramedics arrived looking	fact precluding summary judgment; it is
could then see the paramedics	increasingly more concerned because	immaterial in light of the undisputed
performing CPR on Andy. This was a	Andy was not moving. Zimmerman	fact that GG Fire Department
"shock" and "surprise" to both officers.	testified Andy fell hard to the ground	Paramedics were promptly summoned.
147. Karschamroon Decl., \P ¶39;	after the tasering like a "sack of	In any event, Zimmerman has had no
Gendreau Decl., ¶ 38	potatoes" and saw nothing consistent	medical training, and although his
	with Andy being gently placed on the	eyesight is admittedly impaired, he

ground. Zimmerman testified Andy was a fat guy and the officer could not have placed him gently down if they wanted. Zimmerman testified when Andy hit the ground was dead and never moved again on his own. Zimmerman testified when the police rolled Andy against an officers legs he could clearly see Andy chest and stomach and he was clearly not breathing. Karschamroon testified Gendreau opened up Andy's eyes and Karschamroon could not tell if Andy was breathing. Zimmerman said he saw Gendreau slapping Andy's face and saying "to stop faking". Bua Phan also testified Andy died immediately after tasering.

Dr. Fukumoto testified the evidence is consistent with Andy being dead immediately after he saw tasered.

never wears his prescription contact lens. Zimmerman observed the incident from a distance of approximately 40-50 feet and could not tell what small, detailed movements were occurring. Zimmerman testified that it was possible that Andy was breathing after being tased and that he just did not observe it, and that his belief that Andy was dead is not based on any actual evidence. Dr. Fukumoto testified that he has no way of knowing when Andy died and that he relies on the physician's death pronouncement as to the time of death.

	Dr. Fukumoto also testified that if	
	officers did see labored or heavy	
	breathing they should have known	
	Andy was in cardiad distress and taken	
	off the handcuffs at a minimum.	
	Supporting Evidence: Exhibit A,	
	Deposition of Mark Zimmerman,	
	pp.108: 1-11/18-24, 110: 1-13/22-25,	
	111: 10- 17/18-22, 112: 25, 121: 6-	
	11/15-24, 123: 15-25, 240: 21-25, 242:	
	13-25, 243: 11-16, 244: 12-15, 246: 7-	
	19; Exhibit B, Deposition of Daniel	
	Karschamroon, pp. 397: 7-8; Exhibit D,	
	Deposition of Richard Fukumoto,	
	M.D., pp. 90: 13-16, 258: 16-19, 259:	
	2-23, 260: 1-10, 261: 13-15, 264: 21-	
	24, 266: 13-22, 268:6-22, 280: 19-25,	
	281: 10-25, 282: 7-15, 283: 4-16/21-	
	23; Exhibit E, Deposition of Bua Thi	
	Phan, pp. 243.1: 16-18; 256.1: 2-5.	
148. Although the paramedics	148. Disputed: Zimmerman testified	148. Plaintiff's evidence does not

rendered emergency care and transported to the hospital, Andy Tran did not survive. Toxicology results revealed substantial levels of Diphenhydramine and Trihexylphenidyl in his system at the time of death.

148. Exhibit 6, Toxicology Report

all police officers arrived outside until the paramedics arrived looking increasingly more concerned because Andy was not moving. Zimmerman testified Andy fell hard to the ground after the tasering like a "sack of potatoes" and saw nothing consistent with Andy being gently placed on the ground. Zimmeman testified Andy was a fat guy and the officers could not have placed him gently down if they wanted. Zimmerman testified when Andy hit the ground was dead and never moved again on his own. Zimmerman testified when the police rolled Andy against an officer's legs he could clearly see Andy chest and stomach and he was clearly not breathing. Karschamroon testifed Gendreau opened up Andy's eyes and Karschamroon could not tell if Andy

constitute a genuine issue of material fact precluding summary judgment; it is immaterial in light of Andy's actual resistance while being detained, the totality of the circumstances confronting the officers during that detention, and in light of the undisputed fact that GG Fire Department Paramedics were promptly summoned. In any event, the Plaintiffs' do not dispute the Defendants' UMF, but Dr. Fukumoto opinion that the tasering was a factor in Andy's death was because he already had a bad heart and liver. Dr. Fukumoto testified that he has no way of knowing when Andy died and that he relies on the physician's death pronouncement as to the time of death. Fukumoto Depo., 187:19-188:5, 206:23 - 207:11, 258:7-259:25

was breathing. Zimmerman said he saw Gendreau slapping Andy's face and saying "to stop faking". Bua Phan also testified Andy died immediately after the tasering.

Dr. Fukumoto testified the evidence is consistent with Andy being dead ' immediately after he saw tasered.

Dr. Fukumoto also testified that if officers did see labored or heavy breathing they should have known Andy was in cardiad distress and taken off the handcuffs at a minimum.

Supporting Evidence: Exhibit A,

Deposition of Mark Zimmerman, pp.

108: 1-11118-24, 110: 1-13/22-25,

111:10-17/18-22,112: 25,121: 6-11/15-

24,123: 15-25,240: 21-25,242: 13-25,

243: 11-16,244: 12-15,246: 7-19;

Exhibit B, Deposition of Daniel

Karschamroon, pp. 397: 7-8; Exhibit 0,

	Deposition of Richard Fukumoto,	
	M.D., pp. 90: 13-16,258: 16-19,259: 2-	
	23, 260: 1-10,261: 13-15,264: 21-	
	24,266:13-22,268:6-22,280: 19-25,281:	
	10-25,282: 7-15,283: 4-16/21-23;	
	Exhibit E, Deposition of Bua Thi Phan,	
	pp. 243.1: 16-18; 256.1: 2-5.	
149. The Coroner listed the cause of	149. Disputed: Dr. Fukumoto testified	149. Plaintiff's evidence does not
death as "Cardiac arrhythmia during	no drug played any role in Andy's	constitute a genuine issue of material
struggle with law enforcement due to	death and none where at fatal levels.	fact precluding summary judgment; it is
dilated hyertropic cardiomyopathy with	He testified Andy died from being	immaterial in light of Andy's actual
diphenhydramine and trihexylphenidl	tasered and the evidence was consistent	resistance while being detained, the
intoxication."	with Andy dying immediatly after	totality of the circumstances
149. Exhibit 7, Autopsy Report	being hit with the taser. Andy was in	confronting the officers during that
	full cardiac arrest when the paramedics	detention, and in light of the undisputed
	arrived and his eyes were fixed and	fact that GG Fire Department
	dilated. Dr. Fukumoto has been	Paramedics were promptly summoned.
	qualified as an expert in interpreting	In any event, the Plaintiffs' do not
	toxicology results in Courts.	dispute the Defendants' UMF, but Dr.
	Supporting Evidence: Exhibit D,	Fukumoto opinion that the tasering was
	Deposition of Richard Fukumoto,	a factor in Andy's death was because he

M.D., pp. 63: 1-8, 66: 18-22, 67: 4-5, 90: 13-16, 141: 5-25, 142: 6-7, 143: 2-3, 228: 13-25, 229: 20-25, 239: 10-14/19-25, 240: 1-25,243: 1-25, 245: 17-25, 260: 1-10, 283: 4-16/21-23, 296: 1-7, 304: 1-3/16-18, 305: 8-25, 306: 1-2/10-14, 307: 1-8/22-25, 308: 5-7, 309: 1-5/18-22, 347: 1-4, 355: 2-9.

already had a bad heart and liver. Dr. Fukumoto testified that he has no way of knowing when Andy died and that he relies on the physician's death pronouncement as to the time of death. Fukumoto Depo., 187:19-188:5, 206:23 - 207:11, 258:7-259:25

ADJUDICATION NUMBER 6

DEFENDANTS ARE ENTITLED TO SUMMARY JUDGMENT ON THE SUBSTANTIVE DUE PROCESS CLAIMS REGARDING FAMILIAL RELATIONS BECAUSE THE OFFICERS DID NOT ACT WITH A PURPOSE TO CAUSE HARM

approximately 11:29 a.m., GGPD officers Richard Gendreau and Daniel Karschamroon were dispatched to a report of a "violent, mentally ill male" trying to break into the residence, that someone had been assaulted, and that there was an unknown "weapon"

150. **Disputed:** Neither the 911
Transcript nor the Dispatch CAD state anything about a "violent, mentally ill male" trying to break into residence nor assaulting anyone. They both say this was a 5150 call and Andy needs to' be taken to a hospital. The 911 caller never said Andy had weapons, the

150. Neither the 911 audio nor the CAD dispatch refer to "5150" as claimed by Plaintiffs, but do refer to [Andy Tran] as being crazy, with weapons, and having committed an assault. Although requests were made to take [Andy] to the hospital, that does not constitute a genuine issue of

	4	
involved	dispatcher made a mistake.	material fact precluding summary
150. Karschamroon Decl., $\P\P$ 1-5;	Supporting Evidence: Defense	judgment; officer actions are judged as
Gendreau Decl., $\P\P$ 1-5; Exhibit 2,	Exhibit 2, Transcript/Audio 911;	to all information known or relied
Transcript/Audio 911 Recording;	Defense Exhibit 3, Dispatch CD. As	upon.
Exhibit 3, Dispatch CAD.	will be shown throughout Gendreau's	Karschamroon Decl., $\P\P$ 1-5;
	and Karshamroon's Declaration are	Gendreau Decl., $\P\P$ 1-5; Exhibit 2,
	inconsitent with both their Internal	Transcript/Audio 911 Recording;
	Affairs interviews and Deposition	Exhibit 3, Dispatch CAD.
	Testimony.	
	Supporting Evidence: Exhibit C,	
	Deposition of Gendreau, pp. 305: 5-25;	
	Exhibit I, Gendreau GGPD Internal	
	Affairs Interview, pp. 17-18.	
151. Police Dispatch as well as the	151. Disputed: Dispatch apparently	151. Plaintiffs do not dispute
CAD printout noted the male subject	did not understand 911 call because the	Defendants' UMF, but rather argue that
(Andy Tran) was a "mental case" and	911 caller said nothing about weapons.	police dispatch erroneously concluded
"crazy," that he had weapons, and that a	Dispatch does indicate major	that Andy had weapons. This does not
crying child could be heard in the	languange barrier between 911 caller	constitute a genuine issue of material
background. The reporting party	and dispacth. The CAD printout clearly	fact precluding summary judgment;
indicated that he was dizzy and he	shows this was a 5150 call and	officer actions are judged as to all
would not answer questions about Andy	Gendreau testified he was given further	information known or relied upon, and

Tran's location, and kept repeating "send someone right now, send someone right now. Take to hospital." 151. Karschamroon Decl., ¶ 6 Gendreau Decl., ¶ 6; Exhibit 2, Transcript/Audio 911 recording; Exhibit 3, Dispatch CAD.

information of Andy's prior mental health history. The CAD clearly states Andy needs to be taken to the hospital. **Supporting Evidence:** Exhibit C, Deposition of Gendreau, pp. 305: 5-25; Exhibit I, Gendreau GGPD Internal Affairs Interview, pp. 17-18.

it remains undisputed that Dispatch relayed information that Andy was crazy, with weapons, and had committed an assault. Further, the Plaintiffs citation to Officer Gendreau's deposition testimony does not support their assertion that he was aware of Andy's mental health history before arriving on scene, but rather only that he did not recall telling Internal Affairs that he acquired such knowledge. In any event, such knowledge would be immaterial in light of Andy's actual resistance while being detained, and the totality of the circumstances confronting the officers during that detention.

Transcript/Audio 911 Recording; Exhibit 3, Dispatch CAD; Gendreau Depo., 305:5-25

152. Officers Karschamroon and	152. Disputed: Mark Zimmerman	152. The Plaintiff's citation to Mark
Gendreau arrived at approximately	testified he never saw Andy place any	Zimmerman's deposition does not
11:36 a.m., with Karschamroon first to	portion of his body in the window; in	support their assertion. Zimmerman
arrive. He noticed a male individual	fact he testified he began yelling as	testified that Andy stopped "directing
who appeared to be trying to break into	Andy taking off screen and Andy then	his attention towards opening the
or enter the residence through a	turned towards him at the same time	window and getting in the house" after
window, and broken screen nearby. As	Karschamroon arrived.	Officer Karschamroon ordered Andy to
Officer Karschamroon approached him,	Supporting Evidence: Exhibit A,	stop. In any event, this does not
his body halfway into the window and	Deposition of Mark Zimmerman, pp.	constitute a genuine issue of material
he appeared to be trying to grab	51: 9-22, 52: 1-24.	fact precluding summary judgment; it is
something from inside.		immaterial in light of Andy's actual
152. Karschamroon Decl., ¶ 7; Exhibit		resistance while being detained, and the
3, Dispatch CAD.		totality of the circumstances
		confronting the officers during that
		detention.
		Zimmerman Depo., 50:1-19, 52:7-16
153. Officer Karschamroon was aware	153. Disputed: Officer Karschamroon	153 The Plaintiffs do not dispute
through Dispatch the subject's name	testified he called Andy by his name	Officer Karschamroon called Andy by
was Andy Tran, so he called out	Andy and he was uncertain if he	name, only the source of that
"Andy" three to four times to get his	learned Andy's name from hearing Mr.	information. Further, the cited
attention. Andy stopped, slowly turned	Zimmerman saying it or hearing	deposition testimony does not indicate

around, and faced Officer	Andy's name from dispatch.	how many times Officer Karschamroon
Karschamroon. Andy was instructed to	Karschamroon testified Andy	called Andy's name. The remainder of
come down from the porch, which he	responded immediately and never	Defendants' UMF remains
eventually did, approaching Officer	testified he yelled 3-4 times.	unchallenged. In any event, the
Karschamroon with his hands at his	Supporting Evidence: Exhibit B,	Plaintiffs' evidence does not constitute
sides.	Deposition of Daniel Karschamroon,	a genuine issue of material fact
153. Karschamroon Decl., $\P\P$ 8-10.	pp. 245:15-25,246: 1-4.	precluding summary judgment; it is
		immaterial in light of Andy's actual
		resistance while being detained, and the
		totality of the circumstances
		confronting the officers during that
		detention.
		Karschamroon Depo., 245:15-25,
		246:1-4
154. Officer Karschamroon could	154. Disputed: Karschamroon	154. Plaintiffs' evidence does not
Andy had a blank stare and appeared to	testified Andy had a confused, puzzled	constitute a genuine issue of material
be confused or unsure of what was	look on his face and appeared in need	fact precluding summary judgment; it is
going on. Andy stopped his approach	of medical help.	immaterial in light of Andy's actual
when he was approximately 20 feet	Karschamroon testified he told Andy to	resistance while being detained, and the
from the officer, who then asked Andy	stop when he was 10-15 feet away and	totality of the circumstances
to come closer. As Andy slowly	put his hands on his head and he	confronting the officers during that

approached to within 10 feet of Officer	complied. He never testified Andy ever	detention. In any event, the deposition
Karschamroon's location, he was	stopped before being told to do so and	testimony of Officer Karschamroon
instructed to stop. Andy stopped, but	was told to come closer.	cited by Plaintiffs is consistent with
maintained his blank expression.	Supporting Evidence: Exhibit B,	Defendants' UMF, namely, that Andy
154. Karschamroon Decl., $\P\P$ 11, 12	Deposition of Daniel Karschamroon,	was instructed to stop either "10 feet"
	pp. 244: 15-25, 259: 1-7, 257: 15-22,	or "10-15 feet" from Officer
	276: 19-25, 279: 14-16; Exhibit J,	Karschamroon's location. The cited
	Karschamroon GGPD Internal Affairs	deposition testimony does not include a
	Interview, pp. 5-6.	question whether Andy stopped at any
		time prior to being so instructed, and
		would be an immaterial variance
		regardless.
155. Andy was instructed to put his	155. Undisputed	155. Undisputed.
hands on top of his head and turn		
around, and he slowly complied with		
the directive. Officer Karschamroon		
then approached Andy and told him to		
interlock his fingers, which he did.		
Andy never spoke, but did appear to		
understand what was being said. 155.		

Karschamroon Decl., $\P\P$ 13, 14		
156. Grabbing Andy's hands, Officer	156. Disputed: Neither the 911	156. Plaintiffs' evidence does not
Karschamroon sought to reassure him	Transcript nor the Dispatch CAD state	dispute that Officer Karschamroon
by saying "there's nothing wrong,"	anything about a "violent, mentally ill	attempted to calm and relax Andy, nor
"we're just here to help you," and to	male" trying to break into residence nor	the nature of the call received by
"calm down" and "relax." However, it	assaulting anyone. They both say this	Dispatch. Neither the 911 audio nor the
was important to get Andy secured and	was a 5150 call and Andy needs to be	CAD dispatch refer to "5150" as
handcuffed as the call indicated he was	taken to a hospital. The 911 caller	claimed by Plaintiffs, but do refer to
a violent mental individual with a	never said Andy had weapons, the	[Andy Tran] as being crazy, with
weapon.	dispatcher made a mistake. Given most	weapons, and having committed an
156. Karschamroon Decl., $\P\P$ 14	of Karschamroon's Declaration is	assault. Although requests were made
	vastly different than his Internal Affairs	to take [Andy] to the hospital, that does
	Interview and Deposition Testimony	not constitute a genuine issue of
	anything he says he did is subject to	material fact precluding summary
	impeachment now for prior inconsitent	judgment; officer actions are judged as
	statements, thereby everything in his	to all information known or relied
	Declaration should be viewed with	upon.
	Suspicion.	Karschamroon Decl., $\P\P$ 1-5;
	Supporting Evidence: Defense	Gendreau Decl., $\P\P$ 1-5; Exhibit 2,
	Exhibit 2, Transcript/Audio 911;	Transcript/Audio 911 Recording;
	Defense Exhibit 3, Dispatch CAD.	Exhibit 3, Dispatch CAD.

157. As the first handcuff went on	157. Disputed: Officer Karschamroon	157. Plaintiffs argue semantics but do
Andy's right wrist, his hands	never told Internal Affairs Andy's	not dispute any material fact. Officer
immediately tensed up into fists.	hands ever balled into fists and he	Karschamroon testified at his
Officer Richard Gendreau arrived	testified repeatedly that Andy's hands	deposition that when a handcuff was
Officer Karschamroon was trying to	always remained interlocked after he	placed on Andy's right wrist, Andy
separate Andy's now-clenched fists.	was told to do so and he never saw	"tensed" and Officer Karschamroon
157. Karschamroon Decl., ¶ 15	Andy's hands ball into fists.	"could feel his fingers closing, kind of
	Karschamroon further testified he did	curling up from that interlocked
	not know whether Andy's tension was a	position" and "close up as if the fingers
	result of his attempt to follow the last	were curling." Officer Karschamroon
	command given to interlock his fingers.	also stated in his deposition that Andy
	He also testified Andy was never	was "actively resisting" and that he
	aggressive.	"thought it might turn violent."
	Supporting Evidence: Exhibit J,	Karschamroon Depo., 321:22-322:22,
	Karschamroon GGPD Internal Affairs	362:12-17, 366:14-19
	Interview, pp. 7-8; Exhibit B,	
	Deposition of Daniel Karschamroon,	
	pp. 261: 12-18, 264: 17-20, 265: 13-18,	
	268: 9-10, 270: 10-11, 281: 9-25, 284:	
	1-25, 285: 1-6.	

158. Officer Gendreau noticed the struggle to get Andy's arms behind his back, so he immediately ran over to assist. Officer Gendreau was told that one handcuff was secured, but that Andy was not allowing himself to be cuffed. Officer Karschamroon had a concern that the encounter might turn violent due to Andy's reaction when the first handcuff was placed on his wrist. 158. Karschamroon Decl., ¶¶ 16, 17; Gendreau Decl., ¶¶ 7, 8

158. **Disputed:** Officer Gendreau said he walked fast and did not run. Officer Karschamroon testified he never struggled with Andy is Gendreau's presence nor tried to force Andy's hands behind his back. Karschamroon never said Andy would not allow self to be handcuff and said he told Gendreau Andy was complying but hands tensed when placed first handcuff on. Also Karschamroon and Zimmerman disagree with most of what Gendreau said occured and both Gendreau and Karschamroon have now filed Declarations which are filed with inconsistent statements from their Internal Affairs Interviews and Deposition Testimony their Declarations should be viewed with suspicion.

158. Plaintiffs do not dispute any material fact, argue semantics, and mischaracterize testimony. Mark Zimmerman confirmed that Officer Gendreau approached at "a pretty fast pace." Officer Gendreau testified that Officer Karschamroon told him that Andy was tensed up and that he couldn't get Andy's hands behind his back into a handcuffing position. This is consistent with Officer Karschamroon's testimony that he told Gendreau that Andy was complying and tensed up after one handcuff was secured. Nothing in the cited testimony disputes that Andy continued to resist after Gendreau arrived. Further, Mark Zimmerman testified that Officer Gendreau did assist Officer Karschamroon by putting "his hands on Andy's hands or on the other officer's

Supporting Evidence: Exhibit C,

	T	
	Deposition of Richard Gendreau, pp.	hands or in that vicinity" for "about 20
	175: 1-25, 176: 1-25, 177: 1-5, 206:	seconds" in what appeared to him as an
	19-25; Exhibit B, Deposition of Daniel	effort to "keep more control" of Andy.
	Karschamroon, pp. 285: 11-13;	Zimmerman Depo., 92:19-25, 93:16-
	Karschamroon GGPD Internal Affairs	19, 209:7-22; Gendreau Depo.,
	Interview, pp. 9.	175:20-24; Karschamroon Depo.,
		285:11-14.
159. Andy continued to resist, failed	159. Disputed: Officer Karschamroon	159. Plaintiffs' evidence does not
to obey commands, and did not speak.	had full control of Andy and there was	dispute any material fact, and does not
Officer Gendreau could see that Andy's	never a struggle between the two.	indicate that Officer Karschamroon had
method of resistance was "complete	Officer Karschamroon testified he	full control of Andy or that there was
rigidity"; both of his arms were up, his	never struggled with Andy is	no resistance. Plaintiffs ignore Officer
fists were balled, and he was shaking.	Gendreau's presence nor tried to force	Karschamroon testimony that when a
Despite Officer Karschamroon's best	Andy's hands behind his back.	handcuff was placed on Andy's right
efforts to pull Andy's arms down	Karschamroon never said Andy would	wrist, Andy "tensed" and Officer
behind his back, his arms would not	not allow self to be handcuff and said	Karschamroon "could feel his fingers
move.	he told Gendreau Andy was complying	closing, kind of curling up from that
159. Karschamroon Decl., ¶ 16	but hands tensed when placed first	interlocked position" and "close up as if
Gendreau Decl., ¶ 9	handcuff on. Also given Karschamroon	the fingers were curling." Officer
	and Zimmennan disagree with most of	Karschamroon also stated in his
	what Gendreau said occured and both	deposition that Andy was "actively

	Gendreau and Karschamroon have now	resisting" by not allowing his arms to
	filed Declarations which are filed with	be pulled apart and providing tension to
	inconsistent statements from their	pull his arms together, and that he
	Internal Affairs Interviews and	"thought it might turn violent."
	Deposition Testimony their	Nothing in Plaintiffs' cited testimony
	Declarations should be viewed with	disputes that Andy continued to resist
	suspicion.	after Gendreau arrived. Further, Mark
	Supporting Evidence: Exhibit C,	Zimmerman testified that Officer
	Deposition of Richard Gendreau, pp.	Gendreau did assist Officer
	175: 1-25, 176: 1-25, 177: 1-5,206: 19-	Karschamroon by putting "his hands on
	25; Exhibit B, Deposition of Daniel	Andy's hands or on the other officer's
	Karschamroon, pp. 285: 11-13;	hands or in that vicinity" for "about 20
	Karschamroon GGPD Internal Affairs	seconds" in what appeared to him as an
	Interview, pp. 9.	effort to "keep more control" of Andy.
		Karschamroon Depo., 321:22-322:22,
		280:12-23, 362:12-17, 366:14-19,
		Zimmerman Depo., 92:19-25, 93:16-
		19, 209:7-22
160. To prevent a possible escape,	160. Disputed: Officer Karschamroon	160. Plaintiffs do not dispute any
Officer Gendreau moved in front of	testified he was a foot from Andy and	material fact precluding summary
Andy. From that position, he could see	1-3 feet from Gendreau and He never	judgment. The assertion that Andy did

that Andy was shaking and he began to growl. Andy was not blinking, his pupils appeared to be dilated, and he had saliva coming from the corner of his mouth, almost as though he was foaming at the mouth. Officer Gendreau felt like Andy was looking straight through him.

160. Karschamroon Decl., \P 16 Gendreau Decl., \P 10, 11

heard Andy growl or see his foaming at the mouth, or see Andy shaking other than when Karschamroon shook Andy hands, which moved, to let Andy know he was still behind him. Gendreau testified he never feared Andy would flee or run. Karschamroon testified Andy never made a movement consisting with fleeing or running away Supporting Evidence: Exhibit B, Deposition of Daniel Karschamroon, pp. 261: 12-18, 264: 17-20, 284: 1-25, 285: 1-6, 330: 11-15; Declaration of Daniel Karschamroon, pp. 384: 18, 385: 1-5; Exhibit C, Deposition of Richard Gendreau, pp. 174: 14-17; 176: 1-25, 177: 1-10,182: 2-23,187: 1-8,220: 1-24, 225: 17-24, 266: 1-10.

not try to escape does dispute Officer Gendreau's motivation for positioning himself in front of Andy. Further, Officer Karschamroon was positioned behind Andy, and was not in a position to see Andy's face at the time he was tased. As to the issue of Andy growling, Mark Zimmerman testified that although he never saw Andy's lips moving, he heard some audible things coming out of his mouth. Zimmerman also testified that he could see subtle movement going on between the officers and Andy and that there could have been a "whole 'nother [sic] set of scenarios going on" that he did not see. Karschamroon Depo., 348:9-15, 355:16-19, Zimmerman Depo., 217:3-9, 222:11-223:13, 276:22-25

161. In a casual manner, Officer

161. **Disputed:** Officer Karschamroon

161. Plaintiffs do not dispute

Gendreau said words to the effect of, "Hey, dude, just calm down," and advised Andy to relax, put his hands behind his back, and that "we're not here to hurt you." Officer

Karschamroon was reminding Andy to relax as well, but he was also shaking Andy's still clenched hands to let him know he still needed to be handcuffed.

161. Karschamroon Decl., ¶¶ 19, 20; Gendreau Decl., ¶¶ 12, 13

testified the only thing he heard
Gendreau say was "Hey, dude, calm
down." Gendreau never ackowledged
he said "dude calm down".
Karschamrron testified Gendreau never
told Andy to put his hands behind his
back and the only shaking he saw from
Andy was Karschamroon shaking
Andy to let him know he was there.
Karschamroon testifed he never said
anything to Andy about being
handcuffed.

Supporting Evidence: Exhibit B, Deposition of Daniel Karschamroon, pp. 282, 345: 1-18, 268: 19-23, 269: 1-4; 419, Exhibit B, Deposition of Daniel Karschamroon, pp. 328: 1-7,330: 11-15/17-25, 337: 10-16, 340: 8-9, 341: 7-16.

Defendants' UMF that the officers attempted to relax and calm Andy while attempting to secure him, but rather dispute the exact words spoken. This does not create a genuine issue of material fact precluding summary judgment. Further, it is immaterial that Officer Karschamroon may not have said anything to Andy about being handcuffed since the act of attempting to handcuff him established the officer's intention. Officer Karschamroon's deposition testimony that Andy was not allowing his arms to be pulled apart and was providing tension to pull his arms together demonstrates resistance to that intention.

Karschamroon Depo., 321:22-322:22, 280:12-23, 362:12-17, 366:14-19

officers' orders, and concern grew that the dangling handcuff could be used as a weapon if Andy decided to swing his arm. Both officers then attempted to pry Andy's arms down but could not overcome his flexed/locked position.

A pain compliance technique performed by Officer Gendreau did nothing.

162. Karschamroon Decl., $\P\P$ 21, 22; Gendreau Decl., $\P\P$ 12, 14-16

162. **Disputed:** Gendreau said he did not believe Andy understood anything he said so how can he claim Andy ignored an order? Further, Karschamroon testified that neither "relax" or "dude calm down" were lawful orders. Both Karshamroon and Zimmennan said Gendreau never struggled with Andy except to taser him. Karschamroon testified repeatedly he never saw Gendreau touch Andy and did not struggle either alone or with Gendreau to get Andy's ann behind his back. Karschamroon testified he always had ahold of the loose handcuff so it could not be dangling and used as a weapon. Again, given the many new statements which are completely inconsitent with

162. Plaintiffs do not dispute any material fact precluding summary judgment and mischaracterize testimony. Officer Karschamroon did not testify that "relax" and "calm down" were not lawful orders. Although he did testify he had not received training that such commands were lawful orders, he stated that the commands given were appropriate given the goal of relaxing Andy. Officer Karschamroon also stated in his deposition that Andy was "actively resisting" by not allowing his arms to be pulled apart and providing tension to pull his arms together, and that he "thought it might turn violent." Nothing in Plaintiffs' cited testimony disputes that Andy continued to resist after Gendreau arrived. Further, Mark Zimmerman testified that Officer

and during Deposition testimony puts

statements made to Internal Affairs

the credibilty of Karschamroon and Gendreau is great doubt and their Declarations should be viewed with extreme caution.

Supporting Evidence: Exhibit B,
Deposition of Daniel Karschamroon,
pp. 273: 8-11, 274, 292: 17-23, 293: 1,
331: 16-25, 332: 18-21, 333: 7-11;
Karschamroon GGPD Internal Affairs
Interview, pp. 7-8.; Exhibit A,
Deposition of Mark Zimmerman, pp.
79:11-20,80: 10-16, 81: 4-5, 83: 18-25,
85:1-10,87: 3-7/16-23,97: 5-6, 100: 125, 102: 4-9/20-24,150: 20-25, 151: 911, 197:20-25,198: 1-5,209:23-25,222:
17-25,224: 6-12, 276: 10-20,277: 1-4,
278: 18-21.

Karschamroon by putting "his hands on Andy's hands or on the other officer's hands or in that vicinity" for "about 20 seconds" in what appeared to him as an effort to "keep more control" of Andy. Nothing in Zimmerman's testimony disputes the officers' account of Andy's resistance other than his own speculation. Zimmerman testified that he could see subtle movement going on between the officers and Andy and that there could have been a "whole 'nother [sic] set of scenarios going on" that he did not see. He could not hear what was being said, and although his eyesight is admittedly impaired, he never wears his prescription contact lens. Zimmerman observed the incident from a distance of approximately 40-50 feet could not tell

Gendreau did assist Officer

		what small, detailed movements were
		occurring. He does not know whether
		the officers tried to move Andy's hands
		from the top of his head, and admits
		that many things could have been said
		or done which he could not observe or
		hear. While Zimmerman testified that
		Andy's hands were on his head at all
		times, he cannot say whether there was
		any kind of struggle
		Karschamroon Depo., 321:22-322:22,
		280:12-23, 283:20-284:20, 362:12-17,
		366:14-19, Zimmerman Depo., 22:3-7,
		82:11-18, 92:19-25, 93:16-19, 96:2-10,
		100:7-20, 162:11-19, 187:3-11,
		200:11-24, 201:6-12, 209:7-22, 217:3-
		9, 222:11-223:13, 276:22-25, 287:25-
		288:12.
163. Officer Gendreau thought that if a	163. Disputed: Karschamroon and	163. Plaintiffs' evidence does not
fight ensued, it was going to be a bad	Zimmerman both testified Gendreau	dispute any material fact. Plaintiffs
one given the strength that Andy had	never struggled to force Andy's hands	ignore Officer Karschamroon's

exhibited when resisting both officers attempt to lower his arms. Officer Karschamroon was similarly concerned about officer safety.

163. Karschamroon Decl., ¶ 21; Gendreau Decl., ¶ 19 behind back. Karschamroon said
Gendreau never touched Andy.
Karschamroon testified when he shook
Andy's hands they moved so the
extraordinary strength Gendreau said
Andy had is disputed by
Karschamroon.

Supporting Evidence: Exhibit B,
Deposition of Daniel Karschamroon,
pp.273: 8-11,274, 292: 17-23, 293: 1,
331: 16-25, 332: 18-21, 333: 7-11;
Karschamroon GGPD Internal Affairs
Interview, pp. 7-8.; Exhibit A,
Deposition of Mark Zimmerman,
pp.79: 11-20, 80: 10-16, 81:4-5, 83:
18-25, 85: 1-10, 87: 3-7/16-23, 97: 5-6,
100: 1-25, 102: 4-9/20-24, 150: 20-25,
151: 9-11, 197:20-25, 198: 1-5, 209
:23-25, 222: 17-25, 224: 6-12, 276: 1020, 277: 1-4, 278: 18-21.

testimony that when a handcuff was placed on Andy's right wrist, Andy "tensed" and Officer Karschamroon "could feel his fingers closing, kind of curling up from that interlocked position" and "close up as if the fingers were curling." Officer Karschamroon also stated in his deposition that Andy was "actively resisting" by not allowing his arms to be pulled apart and providing tension to pull his arms together, and that he "thought it might turn violent." Nothing in Plaintiffs' cited testimony disputes that Andy continued to resist after Gendreau arrived. Further, Mark Zimmerman testified that Officer Gendreau did assist Officer Karschamroon by putting "his hands on Andy's hands or on the other officer's hands or in that vicinity" for "about 20 seconds" in what

		appeared to him as an effort to "keep
		more control" of Andy. Nothing in
		Zimmerman's testimony disputes the
		officers' account of Andy's resistance
		other than his own speculation.
		Karschamroon Depo., 321:22-322:22,
		280:12-23, 362:12-17, 366:14-19,
		Zimmerman Depo., 22:3-7, 82:11-18,
		92:19-25, 93:16-19, 96:2-10, 100:7-20,
		162:11-19, 187:3-11, 200:11-24,
		201:6-12, 209:7-22, 217:3-9, 222:11-
		223:13, 276:22-25, 287:25-288:12.
164. As Andy continued to resist	164. Disputed: Karschamroon	164. Plaintiffs do not dispute any
officer commands by remaining rigid	testified after he told Andy to interlock	material fact precluding summary
and non-responsive, Officer Gendreau	his fingers Andy was only told to	judgment and mischaracterize
decided to take out his Taser. Andy	relax or "dude calm down" which	testimony. Officer Karschamroon
was informed several times that if he	Karschamroon testified were not lawful	testified that Officer Gendreau did warn
did not comply, he would be tased.	orders. Gendreau testified he did pot	Andy that he would be tased if he did
Andy continued to resist, so Officer	believe Andy understood anything he	not calm down, and Zimmerman
Gendreau deployed his taser once in	said so it would be difficult for him to	testified that Officer Gendreau had his
Andy's thigh for a cycle of five	"resist" non lawful "commands".	hands on top of Andy's hands for about

seconds.	Karschamroon testified Gendreau told	20 seconds before stepping to the side
164. Karschamroon Decl., ¶¶ 22-25;	him "Danny I'm just going to Tase	to taser him.
Gendreau Decl., $\P\P$ 20-23	him" and Karschamroom testified	Karschamroon Depo., 331:6-12,
	Gendreau never told Andy he was	Zimmerman Depo., 208:8-209:17
	going to be tasered. Zimmerman said	
	Gendreau stepped to Andy's side and	
	immediatly tasered him.	
	Supporting Evidence: Exhibit A,	
	Deposition of Mark Zimmerman, pp.	
	108: 1-11/18-24, 110: 1-13/22-25, 111:	
	10-17/18-22, 112: 25, 121: 6-11/15-24,	
	123: 15-25, 240: 21-25, 242: 13-25,	
	243: 11-16, 244: 12-15, 246: 7-19;	
	Exhibit B, Deposition of Daniel	
	Karschamroon, pp. 397: 7-8; Exhibit D,	
	Deposition of Richard Fukumoto,	
	M.D., pp. 90: 13-16, 258: 16-19, 259:	
	2-23, 260: 1-10, 261: 13-15, 264: 21-	
	24, 266: 13-22, 268:6-22, 280: 19-25,	
	281: 10-25, 282: 7-15, 283: 4-16/21-	
	23; Exhibit E, Deposition of Bua Thi	

	Phan, pp. 243.1: 16-18; 256.1: 2-5.	
165. Prior to deploying the taser,	165. Disputed: GGPD General Order	165. Plaintiffs do not dispute any
Officer Gendreau also attempted to	5.31 states the IVS Unit must be	material fact precluding summary
activate his audio recording system and	activated when a detention was going	judgment. The General Orders are
the one in his police unit, although he	to occur. Gendreau testified he saw	simply "guidelines," and the purpose of
was too far away for remote avtivation.	Karschamroon detaining Andy when he	the In-Car Video System (IVS) is to
Based on the nature of the call and	arrived yet failed to activate his IVS	provide an accurate, unbiased
rapidly evolving events, activating a	Unit; Karschamroon testified he	audiovisual record of enforcement
recorder or his in-unit video during this	thought IVS Unit activation was	related and non-criminal incidents that
incident was "not at the forefront" of	completely within his discretion. No	will enhance criminal prosecutions and
Officer Karschamroon's thoughts.	where in the GGPD General Orders	limit civil liabilities. The policy is non-
165. Karschamroon Decl., ¶ 41;	does it indicate "rapidly evolving	punitive in nature, and no disciplinary
Gendreau Decl., ¶ 20	events" warrant ignoring orders. The	action for violations of this policy will
	fact Gendreau claims to have attempted	be proposed unless the employee
	to activate his IVS Unit shows he had	refuses either actively or passively, as
	time and should have called for a	demonstrated by repeated instances of
	supervisor and medics before tasering	his/her failure. Summoning Fire
	Andy as required by GGPD General	Department Paramedics before the use
	Order 2.25. Further, given the major	of a Taser is only recommended, if
	credibility issues of all involved	practical, under the circumstances.
	officers Plaintiffs do not believe the	

	Court should not accept the IVS	General Order 2.24, 5.31, General
	recordings were destroyed. GGPD	Order, "Statement by the Chief of
	General Order 5.31 states if IVS fails to	Police"
	activate a work order must be	
	completed and Gendreau never did the	
	required paperwwork.	
	Supporting Evidence: Exhibit C,	
	Deposition of Richard Gendreau, pp.	
	97-98, 109: 20-23; Exhibit H, GGPD	
	General Order 2.24, 5.31.	
166. Officer Gendreau was trained that	166. Disputed: Gendreau testified he	166. Plaintiff's evidence does not
one of the best ways to get a subject on	believed that Andy was under the	constitute a genuine issue of material
the ground is to tase them in the leg.	influence of a Central Nervous System	fact precluding summary judgment; it is
His goal was to take Andy into custody	stimulant before he tasered Andy and	immaterial in light of Andy's actual
without any further risk of injury to	knew and had been trained that tasering	resistance while being detained, and the
Andy, Officer Karschamroon or	Andy could cause his immediate death.	totality of the circumstances
himself.	Given theses facts it is difficult to	confronting the officers during that
166. Gendreau Decl., ¶ 22	believe Gendreau did not believe to	detention. Officer Karschamroon
	injure Andy. Further, GGPD General	testified that he did not feel it was
	Orders state a medic and supervisor	necessary to take out any weapon only
	should be called prior to tasering a	up to the point of placing the first

subject. Gendreau testified he tried to activate his IVS and Lux testified it would have take 1-3 seconds to call for a medic and supervisor. Gendreau said Andy was not resisting, being aggressive or looking like would flee when he wass tasered so there was no rush to taser Andy. Andy was therefore a non comabative subject per GGPD General Order 2.6 and Lux testified he trained his students including Gendreau not taser such subjects.

reason to take out any weapons against
Andy and had no idea why Gendreau
was tasering Andy. Lux testified
Karshamroon as the first officer on
scene should have detennined why
Gendreau was going to taser Andy.
Supporting Evidence: Exhibit B,

Karschamroon testified he saw no

handcuff on Andy's wrist. Officer
Gendreau testified that Andy's conduct
and appearance was indicative of
someone who potentially is going to
throw a punch. Plaintiffs' misrepresent
the testimony of Benedict Lux, which
was based on incomplete hypothetical
questioning and not on facts relevant to
this case.

Karschamroon Depo., 251:21-252:6, Gendreau Depo., 178:5-16.

Deposition of Daniel Karschamroon,

	pp. 251: 17-25, 252: 1-118, 355: 21-24,	
	357: 3-18, 360: 1-6; Exhibit C,	
	Deposition of Richard Gendreau, pp.	
	96: 1-16,174: 14-17; 176: 1-25, 177: 1-	
	10, 182: 2-23, 187: 1-8, 220: 1-24, 225:	
	17-24, 266: 1-10, 327: 17-22, 328: 1-	
	14/20-25, 329: 1-18; Exhibit F,	
	Deposition of Benedict Lux, pp. 176:	
	15-22,177:7-20,178:5-14,179: 5-12,	
	204: 1-25, 205: 1-15, 206: 9-22, 209:	
	1-25, 210: 8-18, 211: 9-11, 212: 13-18,	
	244: 14-25, 247: 21-25, 252: 21-25, pp.	
	253: 1-3/5-12, 254, 255: 1-5/12-15;	
	Exhibit H, GGPD General Order 2.24,	
	2.6; Exhibit J, Karschamroon GGPD	
	Internal Affairs Interview, pp. 15.	
167. Once Andy was tased, he began to	167. Disputed: Zimmerman testified	167. Plaintiff's evidence does not
fall backward toward Officer	Andy fell hard to the ground after the	constitute enuine issue of material fact
Karschamroon, who caught him and	tasering like a "sack of potatoes" and	precluding summary judgment; it is
laid him forward onto the ground.	saw nothing consistent with Andy	immaterial in light of Andy's actual
Andy also released his grip, and once	being gently placed on the ground.	resistance while being detained, and the

the taser cycle stopped, the officers	Zimmeman testified Andy was a fat	totality of the circumstances
were able to bring his left arm behind	guy and the officers could not have	confronting the officers during that
his back and apply the other handcuff to	placed him gently down if they wanted.	detention. Zimmerman has had no
secure his arms.	Zimmerman testified when Andy hit	medical training. Although his eyesight
167. Karschamroon Decl., ¶ 26;	the ground was dead and never moved	is admittedly impaired, he never wears
Gendreau Decl., $\P\P$ 24, 25	again on his own.	his prescription contact lens.
	Supporting Evidence: Exhibit A,	Zimmerman observed the incident from
	Deposition of Mark Zimmerman, pp.	a distance of approximately 40-50 feet
	108: 1-11/18-24, 110: 1-13, 240: 21-	and could not tell what small, detailed
	25, 242: 13-25,243: 11-16.	movements were occurring.
		Zimmerman testified that it was
		possible that Andy was breathing after
		being tased and that he just did not
		observe it, and that his belief that Andy
		was dead is not based on any actual
		evidence
		Zimmerman Depo., pp. 22:3-7, 162:11-
		19, 180:20-21; 201:6-12, 293:23-
		294:12
168. At approximately 11:38 a.m.,	168. Disputed: GG Fire Department	168. Plaintiff's evidence does not
Officer Gendreau advised over his	paramedics were not dispached until	constitute a genuine issue of material

police radio that the situation was	11:39:38. Per Lux and GGPD General	fact precluding summary judgment; it
stable, but that Andy had been tased and	Order 2.24 states medics should be	remains undisputed that GG Fire
he requested Garden Grove Fire	called before any tasering and a	Department paramedics were promptly
Department to respond to examine	supervisor must be called before a	dispatched after Andy was tased.
Andy per their protocol when a subject	tasering. Sergeant Wagner was not	General Orders are guidelines and not
is tased. At approximately 11:39 a.m.,	requested until 11:46.	an independent mechanism to pursue
Garden Grove Fire Department was	Supporting Evidence: Exhibit D,	civil liability.
dispatched to the incident scene in	Deposition of Richard Fukumoto,	General Orders, "Statement by the
reference to Andy being tased.	M.D., pp. 90: 13-16, 282: 7-15, 283:4-	Police Chief"
168. Karschamroon Decl., ¶ 27;	16/21-23; Exhibit F, Deposition of	
Gendreau Decl., ¶ 26; Exhibit 3	Benedict Lux, pp. 249: 15-25, 250: 9-	
Dispatch CAD	10, 260: 13-25, 262: 15-25, 263: 1-3;	
	Exhibit H, GGPD General Order 2.24;	
	Exhibit K., Sergeant Wagner's report.	
169. As he was handcuffed and on the	169. Disputed: Zimmerman testified	169. Plaintiff's evidence does not
ground, Andy looked in various	Andy fell hard to the ground after the	constitute a genuine issue of material
directions. Officer Gendreau continued	tasering like a "sack of potatoes" and	fact precluding summary judgment; it is
to instruct him to relax, and informed	saw nothing consistent with Andy	immaterial in light of the undisputed
him they were in the process of getting	being gently placed on the ground.	fact that GG Fire Department
him medical attention. When asked if	Zimmeman testified Andy was a fat	Paramedics were promptly summoned.
he was doing okay, Andy remained	guy and the officers could not have	In any event, Zimmerman has had no

unresponsive but continued to look around.

169. Karschamroon Decl., ¶ 30; Gendreau Decl., ¶ 27

placed him gently down if they wanted. Zimmerman testified when Andy hit the ground was dead and never moved again on his own. Karschamroon testifed Gendreau opened up Andy's eyes and Karschamroon could not tell if Andy was breathing. Zimmerman said he saw Gendreau slapping Andy's face and saying "to stop faking". Bua Phan also testified Andy died immediately after the tasering. Dr. Fukumoto testified the evidence is consistent with Andy being dead immediately after he saw tasered. Supporting Evidence: Exhibit A, Deposition of Mark Zimmerman, pp. 108: 1-11/18-24, 110: 1-13/22-25, 111: 10-17/18-22, 112: 25, 121: 6-11/15-24,123: 15,- 25, 240: 21-25, 242: 13-25, 243: 11-16,244: 12-15,246: 7-19; Exhibit B, Deposition of Daniel

medical training, and although his eyesight is admittedly impaired, he never wears his prescription contact lens. Zimmerman observed the incident from a distance of approximately 40-50 feet and could not tell what small, detailed movements were occurring. Zimmerman testified that it was possible that Andy was breathing after being tased and that he just did not observe it, and that his belief that Andy was dead is not based on any actual evidence. Dr. Fukumoto testified that he has no way of knowing when Andy died and that he relies on the physician's death pronouncement as to the time of death. Zimmerman Depo., 22:3-7, 162:11-19, 180:20-21; 201:6-12, 293:23-294:12; Fukumoto Depo., 187:19-188:5,

258:7-259:25

Karschamroon, pp. 397: 7-8; Exhibit D, Deposition of Richard Fukumoto, M.D., pp. 90: 13-16, 258: 16-19, 259:2-23, 260: 1-10, 261: 13-15, 264: 21-24, 266: 13-22, 268:6-22, 280: 19-25, 281: 10-25, 282: 7-15, 283: 4-16/21-23; Exhibit E, Deposition of Bua Thi Phan, pp. 243.1: 16-18; 256.1: 2-5. 170. After the tasing, a third officer 170. Plaintiff's evidence does not 170. **Disputed:** Zimmerman testified arrived on scene, Officer Amir El-Farra. Andy fell hard to the ground after the constitute a genuine issue of material The officers decided to roll Andy over tasering like a "sack of potatoes" and fact precluding summary judgment; it is on his back to observe him from the saw, nothing consistent with Andy immaterial in light of the undisputed front. His eyes were closed, but a check being gently placed on the ground. fact that GG Fire Department by Officer Gendreau found they were Zimmeman testified Andy was a fat Paramedics were promptly summoned. dilated. Because of that and Andy's guy and the officers could not have In any event, Zimmerman has had no labored breathing, the officers decided placed him gently down if they wanted. medical training, and although his to sit him up against Officer El-Farra's Zimmerman testified when Andy hit eyesight is admittedly impaired, he leg, thinking it might help with his the ground was dead and never moved never wears his prescription contact breathing and help snap him out of the again on his own. Zimmerman testified lens. Zimmerman observed the trance he appeared to be in. when the police rolled Andy against an incident from a distance of 170. Karschamroon Decl., $\P\P$ 29-34; officers legs he could clearly see Andy approximately 40-50 feet and could not

Gendreau Decl.,	$\P\P$ 31-32; El-Farra
$Decl., \P\P6-8$	

chest and stomach and he was clearly not breathing. Karschamroon testifed Gendreau opened up Andy's eyes and Karschamroon could not tell if Andy was breathing. Zimmerman said he saw Gendreau slapping Andy's face and saying "to stop faking". Bua Phan also testified Andy died immediately after the tasering.

Dr. Fukumoto testified the evidence is consistent with Andy being dead immediately after he saw tasered.

Supporting Evidence: Exhibit A,

Deposition of Mark Zimmerman, pp.

108: 1-11/18-24, 110: 1-13/22-25, 111:

10-17/18-22,112: 25, 121: 6-11/15-24,

123: 15-25; 240: 21-25; 242: 13-25,

243: 11-16, 244: 12-15, 246: 7-19;

Exhibit B, Deposition of Daniel

Karschamroon, pp. 397: 7-8; Exhibit D,

Deposition of Richard Fukumoto,

tell what small, detailed movements were occurring. Zimmerman testified that it was possible that Andy was breathing after being tased and that he just did not observe it, and that his belief that Andy was dead is not based on any actual evidence. Dr. Fukumoto testified that he has no way of knowing when Andy died and that he relies on the physician's death pronouncement as to the time of death.

Zimmerman Depo., 22:3-7, 162:11-19, 180:20-21; 201:6-12, 293:23-294:12; Fukumoto Depo., 187:19-188:5, 258:7-259:25

	M.D., pp. 90: 13-16, 258: 16-19, 259:	
	2-23, 260: 1-10, 261: 13-15, 264: 21-	
	24,266: 13-22, 268:6-22, 280: 19-25,	
	281: 10-25, 282: 7-15, 283: 4-16/21-	
	23; Exhibit E, Deposition of Bua Thi	
	Phan, pp. 243.1: 16-18; 256.1: 2-5.	
171. Given Andy's dilated pupils in	171. Disputed: Gendreau testified he	171. Plaintiff's evidence does not
bright sunlight and his rapid pulse,	believed that Andy was under the	constitute a genuine issue of material
Officer Gendreau did consider that he	influence of a Central Nervous System	fact precluding summary judgment; it is
may be under the influence of a	stimulant before he tasered Andy and	immaterial in light of Andy's actual
controlled substance, but he never had	knew and had been trained that tasering	resistance while being detained, and the
the opportunity to do a full evaluation.	Andy could cause his immediate death.	totality of the circumstances
171. Gendreau Decl., ¶ 37	Given theses facts it is difficult to	confronting the officers during that
	believe Gendreau did not believe to	detention. Officer Karschamroon
	injure Andy. Further, GGPD General	testified that he did not feel it was
	Orders state a medic and supervisor	necessary to take out any weapon only
	should be called prior to tasering a	up to the point of placing the first
	subject. Gendreau testified he tried to	handcuff on Andy's wrist. Officer
	activate his IVS and Lux testified it	Gendreau testified that Andy's conduct
	would have take 1-3 seconds to call for	and appearance was indicative of
	a medic and supervisor. Gendreau said	someone who potentially is going to

Andy was not resisting, being aggressive or looking like would flee when he wass tasered so there was no rush to taser Andy. Andy was therefore a non comabative subject per GGPD General Order 2.6 and Lux testified he trained his students including Gendreau not taser such subjects.

Karschamroon testified he saw no reason to take out any weapons against Andy and had no idea why Gendreau was tasering Andy. Lux testified Karshamroon as the first officer on scene should have detennined why Gendreau was going to taser Andy.

Supporting Evidence: Exhibit B,

Deposition of Daniel Karschamroon,

pp. 251: 17-25, 252: 1-118, 355: 21-24, 357: 3-18, 360: 1-6; Exhibit C,

Deposition of Richard Gendreau, pp.

96: 1-16,174: 14-17; 176: 1-25, 177: 1-

throw a punch. Plaintiffs' misrepresent the testimony of Benedict Lux, which was based on incomplete hypothetical questioning and not on facts relevant to this case.

Karschamroon Depo., 251:21-252:6, Gendreau Depo., 178:5-16.

	10, 182: 2-23, 187: 1-8, 220: 1-24, 225:	
	17-24, 266: 1-10, 327: 17-22, 328: 1-	
	14/20-25, 329: 1-18; Exhibit F,	
	Deposition of Benedict Lux, pp. 176:	
	15-22,177:7-20,178:5-14,179: 5-12,	
	204: 1-25, 205: 1-15, 206: 9-22, 209:	
	1-25, 210: 8-18, 211: 9-11, 212: 13-18,	
	244: 14-25, 247: 21-25, 252: 21-25, pp.	
	253: 1-3/5-12, 254, 255: 1-5/12-15;	
	Exhibit H, GGPD General Order 2.24,	
	2.6; Exhibit J, Karschamroon GGPD	
	Internal Affairs Interview, pp. 15.	
172. As Andy was seated upright and	172. Disputed: Zimmerman testified	172 Plaintiff's evidence does not
leaning against Officer El-Farra's leg,	Andy fell hard to the ground after the	constitute a genuine issue of material
his breathing was observed to be	tasering like a "sack of potatoes" and	fact precluding summary judgment; it is
labored but no officer believed the	saw, nothing consistent with Andy	immaterial in light of the undisputed
situation to be critical. Officer	being gently placed on the ground.	fact that GG Fire Department
Karschamroon saw nothing to suggest a	Zimmeman testified Andy was a fat	Paramedics were promptly summoned.
life-threatening situation, Officer	guy and the officers could not have	In any event, Zimmerman has had no
Gendreau "felt comfortable" upon	placed him gently down if they wanted.	medical training, and although his
hearing the approach of the medics, and	Zimmerman testified when Andy hit	eyesight is admittedly impaired, he

Officer El-Farra could see Andy's chest rising and falling.

172. Karschamroon Decl., ¶ 35;
Gendreau Decl., ¶¶ 33-34; El-Farra
Decl., ¶¶10

the ground was dead and never moved again on his own. Zimmerman testified when the police rolled Andy against an officers legs he could clearly see Andy chest and stomach and he was clearly not breathing. Karschamroon testifed Gendreau opened up Andy's eyes and Karschamroon could not tell if Andy was breathing. Zimmerman said he saw Gendreau slapping Andy's face and saying "to stop faking". Bua Phan also testified Andy died immediately after the tasering.

Dr. Fukumoto testified the evidence is consistent with Andy being dead immediately after he saw tasered.

Dr. Fukumoto also testified that if officers did see labored or heavy breathing they should have known Andy was in cardiad distress and taken off the handcuffs at a minimum.

never wears his prescription contact lens. Zimmerman observed the incident from a distance of approximately 40-50 feet and could not tell what small, detailed movements were occurring. Zimmerman testified that it was possible that Andy was breathing after being tased and that he just did not observe it, and that his belief that Andy was dead is not based on any actual evidence. Dr. Fukumoto testified that he has no way of knowing when Andy died and that he relies on the physician's death pronouncement as to the time of death.

Zimmerman Depo., 22:3-7, 162:11-19, 180:20-21; 201:6-12, 293:23-294:12; Fukumoto Depo., 187:19-188:5, 258:7-259:25

	Supporting Evidence: Exhibit A,	
	Deposition of Mark Zimmerman,	
	pp.108: 1-11/18-24, 110: 1-13/22-25,	
	111: 10- 17/18-22, 112: 25, 121: 6-	
	11/15-24, 123: 15-25, 240: 21-25, 242:	
	13-25, 243: 11-16, 244: 12-15, 246: 7-	
	19; Exhibit B, Deposition of Daniel	
	Karschamroon, pp. 397: 7-8; Exhibit D,	
	Deposition of Richard Fukumoto,	
	M.D., pp. 90: 13-16, 258: 16-19, 259:	
	2-23, 260: 1-10, 261: 13-15, 264: 21-	
	24, 266: 13-22, 268:6-22, 280: 19-25,	
	281: 10-25, 282: 7-15, 283: 4-16/21-	
	23; Exhibit E, Deposition of Bua Thi	
	Phan, pp. 243.1: 16-18; 256.1: 2-5.	
173. Officer Gendreau asked Officer	173. Zimmerman testified all police	173. Plaintiff's evidence does not
El-Farra to stay with Andy as he and	officers arrived outside until the	constitute a genuine issue of material
Officer Karschamroon ascertained the	paramedics arrived looking	fact precluding summary judgment; it is
welfare or condition of the calling party	increasingly more concerned because	immaterial in light of the undisputed
or family considering the nature of the	Andy was not moving. Per Exhibit 3	fact that GG Fire Department
call and the need to determine if anyone	of Defendants Motion El-Farra was on	Paramedics were promptly summoned.

had been injured or attacked by Andy. scene at 11:38 and Paramedics did not In any event, Zimmerman "thinks" Officer El-Farra estimates that he was Officers Karschamroon and Gendreau arrive until 11:44 so El-Farra was on in front of the residence, with Andy, for scene for several minutes prior to the remained with Andy until the approximately 15 to 20 seconds paramedics arrival. paramedics arrived but concedes he lost thereafter prior to medics arriving. Supporting Evidence: Exhibit A, track of them. 173. Karschamroon Decl., $\P\P$ 35-36; Deposition of Mark Zimmerman, pp. Zimmerman Depo., 264:18-23, 267:12-123: 15-25,246: 7-19, 251: 4, 264: 18-14, 307:21-25 Gendreau Decl., ¶ 33-34; El-Farra *Decl.*, ¶ 11-12 25,265: 5-14118-25,267: 6-8.; Defense Exhibit 3, Dispatch CAD. 174. Officers Gendreau and 174. Plaintiff's evidence does not 174. **Disputed:** Zimmerman testified all police officers arrived outside until Karschamroon then contacted Andy's constitute a genuine issue of material family inside the residence, but it the paramedics arrived looking fact precluding summary judgment; it is appeared the only individual who increasingly more concerned because immaterial in light of the undisputed fact that GG Fire Department sustained an injury was Plaintiff Bua Andy was not moving. Per Exhibit 3 of Thi Phan, who had sustained a scraped Defedants Motion EI-Farra was on Paramedics were promptly summoned. elbow. Her injury was measured and scene at 11:38 and Paramedics did not In any event, Zimmerman "thinks" Officers Karschamroon and Gendreau arrive until 11:44 so EI-Farra was on photographed. 174. *Karschamroon Decl.*, ¶¶37-38; scene for minutes prior to the remained with Andy until the Gendreau Decl., ¶ 35; Exhibit 4, paramedics arrival. There has been no paramedics arrived but concedes he lost testimony by Karschamroon or track of them. Further, Plaintiffs do not Photograph of Injury; Exhibit 5, Photograph of Screen Gendreau that they ever personally deny that Bua Thi Phan was injured in a

	observed any injury nor photographed	struggle with Andy.
	any injury to Bua Phan so there is a	Zimmerman Depo., 264:18-23, 267:12-
	complete lack of foundation for this	14, 307:21-25
	"new" testimony. Again, another	
	example of recreating history by	
	Karschamroon and Gendreau and	
	another reason to disbelieve both of	
	their Declarations. Further, the attached	
	photographs were submitted late and	
	beyond the Motion Cut-Off time.	
	Supporting Evidence: Exhibit A,	
	Deposition of Mark Zimmerman, pp.	
	123: 15-25,246: 7-19, 251: 4,264: 18-	
	25,265: 5-14/18-25,267: 6-8.; Defense	
	Exhibit 3, Dispatch CAD.	
175. An approaching medic was	175. Disputed: Zimmerman testified	175. Plaintiff's evidence does not
informed by Officer El-Farra about the	Andy fell hard to the ground after the	constitute a genuine issue of material
tasing and Andy's labored breathing.	tasering like a "sack of potatoes" and	fact precluding summary judgment; it is
The medic checked for Andy's pulse	saw nothing consistent with Andy	immaterial in light of the undisputed
and informed Officer El-Farra that he	being gently placed on the ground.	fact that GG Fire Department
needed to start CPR. This took Officer	Zimmerman testified Andy was a fat	Paramedics were promptly summoned.

El-Farra completely by surprise. When he had looked away from Andy to speak to the medic, Andy had been breathing. At no time did Officer El-Farra hear or see Andy stop breathing, or notice any other physical difficulties.

175. El-Farra Decl., ¶ 13-17

guy and the officer could not have placed him gently down if they wanted. Zimmerman testified when Andy hit the ground was dead and never moved again on his own. Zimmerman testified when the police rolled Andy against an officers legs he could clearly see Andy chest and stomach and he was clearly not breathing. Karschamroon testified Gendreau opened up Andy's eyes and Karschamroon could not tell if Andy was breathing. Zimmerman said he saw Gendreau slapping Andy's face and saying "to stop faking". Bua Phan also testified Andy died immediately after tasering.

Dr. Fukumoto testified the evidence is consistent with Andy being dead immediately after he saw tasered.

Dr. Fukumoto also testified that if officers did see labored or heavy

In any event, Zimmerman has had no medical training, and although his eyesight is admittedly impaired, he never wears his prescription contact lens. Zimmerman observed the incident from a distance of approximately 40-50 feet and could not tell what small, detailed movements were occurring. Zimmerman testified that it was possible that Andy was breathing after being tased and that he just did not observe it, and that his belief that Andy was dead is not based on any actual evidence. Dr. Fukumoto testified that he has no way of knowing when Andy died and that he relies on the physician's death pronouncement as to the time of death.

Zimmerman Depo., 22:3-7, 162:11-19, 180:20-21; 201:6-12, 293:23-294:12; Fukumoto Depo., 187:19-188:5,

	breathing they should have known	258:7-259:25
	Andy was in cardiad distress and taken	
	off the handcuffs at a minimum.	
	Supporting Evidence: Exhibit A,	
	Deposition of Mark Zimmerman,	
	pp.108: 1-11/18-24, 110: 1-13/22-25,	
	111: 10- 17/18-22, 112: 25, 121: 6-	
	11/15-24, 123: 15-25, 240: 21-25, 242:	
	13-25, 243: 11-16, 244: 12-15, 246: 7-	
	19; Exhibit B, Deposition of Daniel	
	Karschamroon, pp. 397: 7-8; Exhibit D,	
	Deposition of Richard Fukumoto,	
	M.D., pp. 90: 13-16, 258: 16-19, 259:	
	2-23, 260: 1-10, 261: 13-15, 264: 21-	
	24, 266: 13-22, 268:6-22, 280: 19-25,	
	281: 10-25, 282: 7-15, 283: 4-16/21-	
	23; Exhibit E, Deposition of Bua Thi	
	Phan, pp. 243.1: 16-18; 256.1: 2-5.	
176. After checking the house, the	176. Zimmerman testified all police	176. Plaintiff's evidence does not
Officers Gendreau and Karschamroon	officers arrived outside until the	constitute a genuine issue of material
started toward the front door. They	paramedics arrived looking	fact precluding summary judgment; it is

could then see the paramedics
performing CPR on Andy. This was a
"shock" and "surprise" to both officers.

176. Karschamroon Decl., ¶¶39;
Gendreau Decl., ¶ 38

increasingly more concerned because Andy was not moving. Zimmerman testified Andy fell hard to the ground after the tasering like a "sack of potatoes" and saw nothing consistent with Andy being gently placed on the ground. Zimmerman testified Andy was a fat guy and the officer could not have placed him gently down if they wanted. Zimmerman testified when Andy hit the ground was dead and never moved again on his own. Zimmerman testified when the police rolled Andy against an officers legs he could clearly see Andy chest and stomach and he was clearly not breathing. Karschamroon testified Gendreau opened up Andy's eyes and Karschamroon could not tell if Andy was breathing. Zimmerman said he saw Gendreau slapping Andy's face

immaterial in light of the undisputed fact that GG Fire Department Paramedics were promptly summoned. In any event, Zimmerman has had no medical training, and although his eyesight is admittedly impaired, he never wears his prescription contact lens. Zimmerman observed the incident from a distance of approximately 40-50 feet and could not tell what small, detailed movements were occurring. Zimmerman testified that it was possible that Andy was breathing after being tased and that he just did not observe it, and that his belief that Andy was dead is not based on any actual evidence. Dr. Fukumoto testified that he has no way of knowing when Andy died and that he relies on the physician's death pronouncement as to the time of death.

and saying "to stop faking". Bua Phan also testified Andy died immediately after tasering.

Dr. Fukumoto testified the evidence is consistent with Andy being dead immediately after he saw tasered.

Dr. Fukumoto also testified that if officers did see labored or heavy breathing they should have known Andy was in cardiad distress and taken off the handcuffs at a minimum.

Supporting Evidence: Exhibit A,

Deposition of Mark Zimmerman, pp.108: 1-11/18-24, 110: 1-13/22-25, 111: 10- 17/18-22, 112: 25, 121: 6-11/15-24, 123: 15-25, 240: 21-25, 242: 13-25, 243: 11-16, 244: 12-15, 246: 7-19; Exhibit B, Deposition of Daniel Karschamroon, pp. 397: 7-8; Exhibit D, Deposition of Richard Fukumoto, Zimmerman Depo., 22:3-7, 162:11-19, 180:20-21; 201:6-12, 293:23-294:12; Fukumoto Depo., 187:19-188:5, 258:7-259:25

M.D., pp. 90: 13-16, 258: 16-19, 259:

	2-23, 260: 1-10, 261: 13-15, 264: 21-	
	24, 266: 13-22, 268:6-22, 280: 19-25,	
	281: 10-25, 282: 7-15, 283: 4-16/21-	
	23; Exhibit E, Deposition of Bua Thi	
	Phan, pp. 243:1:16-18, 256.1:2-5.	
177. Although the paramedics	177. Disputed: Zimmerman testified	177. Plaintiff's evidence does not
rendered emergency care and	all police officers arrived outside until	constitute a genuine issue of material
transported to the hospital, Andy Tran	the paramedics arrived looking	fact precluding summary judgment; it is
did not survive. Toxicology results	increasingly more concerned because	immaterial in light of Andy's actual
revealed substantial levels of	Andy was not moving. Zimmerman	resistance while being detained, the
Diphenhydramine and	testified Andy fell hard to the ground	totality of the circumstances
Trihexylphenidyl in his system at the	after the tasering like a "sack of	confronting the officers during that
time of death.	potatoes" and saw nothing consistent	detention, and in light of the undisputed
177. Exhibit 6, Toxicology Report	with Andy being gently placed on the	fact that GG Fire Department
	ground. Zimmeman testified Andy was	Paramedics were promptly summoned.
	a fat guy and the officers could not	In any event, the Plaintiffs' do not
	have placed him gently down if they	dispute the Defendants' UMF, but Dr.
	wanted. Zimmerman testified when	Fukumoto opinion that the tasering was
	Andy hit the ground was dead and	a factor in Andy's death was because he
	never moved again on his own.	already had a bad heart and liver. Dr.
	Zimmerman testified when the police	Fukumoto testified that he has no way

rolled Andy against an officer's legs he could clearly see Andy chest and stomach and he was clearly not breathing. Karschamroon testifed Gendreau opened up Andy's eyes and Karschamroon could not tell if Andy was breathing. Zimmerman said he saw Gendreau slapping Andy's face and saying "to stop faking". Bua Phan also testified Andy died immediately after the tasering.

Dr. Fukumoto testified the evidence is consistent with Andy being dead ' immediately after he saw tasered.

Dr. Fukumoto also testified that if officers did see labored or heavy breathing they should have known

Andy was in cardiad distress and taken off the handcuffs at a minimum.

of knowing when Andy died and that he relies on the physician's death pronouncement as to the time of death. Fukumoto Depo., 187:19-188:5, 206:23 - 207:11, 258:7-259:25

Deposition of Mark Zimmerman, pp.

Supporting Evidence: Exhibit A,

	108: 1-11118-24, 110: 1-13/22-25,	
	111:10-17/18-22,112: 25,121: 6-11/15-	
	24,123: 15-25,240: 21-25,242: 13-25,	
	243: 11-16,244: 12-15,246: 7-19;	
	Exhibit B, Deposition of Daniel	
	Karschamroon, pp. 397: 7-8; Exhibit 0,	
	Deposition of Richard Fukumoto,	
	M.D., pp. 90: 13-16,258: 16-19,259: 2-	
	23, 260: 1-10,261: 13-15,264: 21-	
	24,266:13-22,268:6-22,280: 19-25,281:	
	10-25,282: 7-15,283: 4-16/21-23;	
	Exhibit E, Deposition of Bua Thi Phan,	
	pp. 243.1: 16-18; 256.1: 2-5.	
178. The Coroner listed the cause of	178. Disputed: Dr. Fukumoto testified	178. Plaintiff's evidence does not
death as "Cardiac arrhythmia during	no drug played any role in Andy's	constitute a genuine issue of material
struggle with law enforcement due to	death and none where at fatal levels.	fact precluding summary judgment; it is
dilated hyertropic cardiomyopathy with	He testified Andy died from being	immaterial in light of Andy's actual
diphenhydramine and trihexylphenidl	tasered and the evidence was consistent	resistance while being detained, the
intoxication."	with Andy dying immediatly after	totality of the circumstances
178. Exhibit 7, Autopsy Report	being hit with the taser. Andy was in	confronting the officers during that
	full cardiac arrest when the paramedics	detention, and in light of the undisputed

arrived and his eyes were fixed and dilated. Dr. Fukumoto has been qualified as an expert in interpreting toxicology results in Courts. Supporting Evidence: Exhibit D, Deposition of Richard Fukumoto, M.D., pp. 63: 1-8, 66: 18-22, 67: 4-5, 90: 13-16, 141: 5-25, 142: 6-7, 143: 2-3, 228: 13-25, 229: 20-25, 239: 10-14/19-25, 240: 1-25,243: 1-25, 245: 17-25, 260: 1-10, 283: 4-16/21-23, 296: 1-7, 304: 1-3/16-18, 305: 8-25, 306: 1-2/10-14, 307: 1-8/22-25, 308: 5-7, 309: 1-5/18-22, 347: 1-4, 355: 2-9.

fact that GG Fire Department Paramedics were promptly summoned. In any event, the Plaintiffs' do not dispute the Defendants' UMF, but Dr. Fukumoto opinion that the tasering was a factor in Andy's death was because he already had a bad heart and liver. Dr. Fukumoto testified that he has no way of knowing when Andy died and that he relies on the physician's death pronouncement as to the time of death. Fukumoto Depo., 187:19-188:5, 206:23 - 207:11, 258:7-259:25

ADJUDICATION NUMBER 7

PLAINTIFFS' FOURTH CAUSE OF ACTION FOR VIOLATION OF THE BANE ACT (CAL.CIV.CODE § 52.1) FAILS AS A MATTER OF LAW

179. On September 3, 2008, at	179. Disputed: Neither the 911	179. Neither the 911 audio nor the
approximately 11:29 a.m., GGPD	Transcript nor the Dispatch CAD state	CAD dispatch refer to "5150" as
officers Richard Gendreau and Daniel	anything about a "violent, mentally ill	claimed by Plaintiffs, but do refer to

Karschamroon were dispatched to a
report of a "violent, mentally ill male"
trying to break into the residence, that
someone had been assaulted, and that
there was an unknown "weapon"
involved.
179. Karschamroon Decl., $\P\P$ 1-5;
Gendreau Decl., $\P\P$ 1-5; Exhibit 2,

179. Karschamroon Decl., $\P\P$ 1-5; Gendreau Decl., $\P\P$ 1-5; Exhibit 2, Transcript/Audio 911 Recording; Exhibit 3, Dispatch CAD.

male" trying to break into residence nor assaulting anyone. They both say this was a 5150 call and Andy needs to' be taken to a hospital. The 911 caller never said Andy had weapons, the dispatcher made a mistake.

Supporting Evidence: Defense
Exhibit 2, Transcript/Audio 911;
Defense Exhibit 3, Dispatch CD. As will be shown throughout Gendreau's and Karshamroon's Declaration are inconsitent with both their Internal Affairs interviews and Deposition Testimony.

Supporting Evidence: Exhibit C,
Deposition of Gendreau, pp. 305: 5-25;
Exhibit I, Gendreau GGPD Internal
Affairs Interview, pp. 17-18.

[Andy Tran] as being crazy, with weapons, and having committed an assault. Although requests were made to take [Andy] to the hospital, that does not constitute a genuine issue of material fact precluding summary judgment; officer actions are judged as to all information known or relied upon.

Karschamroon Decl., $\P\P$ 1-5; Gendreau Decl., $\P\P$ 1-5; Exhibit 2, Transcript/Audio 911 Recording; Exhibit 3, Dispatch CAD.

180.	Police	Dispatch	as well	as the
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180. **Disputed:** Dispatch apparently

180. 180. Plaintiffs do not dispute

CAD printout noted the male subject (Andy Tran) was a "mental case" and "crazy," that he had weapons, and that a crying child could be heard in the background. The reporting party indicated that he was dizzy and he would not answer questions about Andy Tran's location, and kept repeating "send someone right now, send someone right now. Take to hospital." 180. Karschamroon Decl., ¶ 6 Gendreau Decl., \P 6; Exhibit 2, Transcript/Audio 911 recording; Exhibit 3, Dispatch CAD.

did not understand 911 call because the 911 caller said nothing about weapons. Dispatch does indicate major languange barrier between 911 caller and dispacth. The CAD printout clearly shows this was a 5150 call and Gendreau testified he was given further information of Andy's prior mental health history. The CAD clearly states Andy needs to be taken to the hospital. Supporting Evidence: Exhibit C, Deposition of Gendreau, pp. 305: 5-25; Exhibit I, Gendreau GGPD Internal Affairs Interview, pp. 17-18.

Defendants' UMF, but rather argue that police dispatch erroneously concluded that Andy had weapons. This does not constitute a genuine issue of material fact precluding summary judgment; officer actions are judged as to all information known or relied upon, and it remains undisputed that Dispatch relayed information that Andy was crazy, with weapons, and had committed an assault. Further, the Plaintiffs citation to Officer Gendreau's deposition testimony does not support their assertion that he was aware of Andy's mental health history before arriving on scene, but rather only that he did not recall telling Internal Affairs that he acquired such knowledge. In any event, such knowledge would be immaterial in light of Andy's actual resistance while being detained, and the

		totality of the circumstances
		confronting the officers during that
		detention.
		Turne mint/Audia 011 Danadina
		Transcript/Audio 911 Recording;
		Exhibit 3, Dispatch CAD; Gendreau
		Depo., 305:5-25
181. Officers Karschamroon and	181. Disputed: Mark Zimmerman	181. The Plaintiff's citation to Mark
Gendreau arrived at approximately	testified he never saw Andy place any	Zimmerman's deposition does not
11:36 a.m., with Karschamroon first to	portion of his body in the window; in	support their assertion. Zimmerman
arrive. He noticed a male individual	fact he testified he began yelling as	testified that Andy stopped "directing
who appeared to be trying to break into	Andy taking off screen and Andy then	his attention towards opening the
or enter the residence through a	turned towards him at the same time	window and getting in the house" after
window, and broken screen nearby. As	Karschamroon arrived.	Officer Karschamroon ordered Andy to
Officer Karschamroon approached him,	Supporting Evidence: Exhibit A,	stop. In any event, this does not
his body halfway into the window and	Deposition of Mark Zimmerman, pp.	constitute a genuine issue of material
he appeared to be trying to grab	51: 9-22, 52: 1-24.	fact precluding summary judgment; it is
something from inside.		immaterial in light of Andy's actual
181. Karschamroon Decl., ¶ 7; Exhibit		resistance while being detained, and the
3, Dispatch CAD.		totality of the circumstances
		confronting the officers during that

		detention.
182. Officer Karschamroon was aware through Dispatch the subject's name was Andy Tran, so he called out "Andy" three to four times to get his attention. Andy stopped, slowly turned around, and faced Officer	182. Disputed: Officer Karschamroon testified he called Andy by his name Andy and he was uncertain if he learned Andy's name from hearing Mr. Zimmerman saying it or hearing Andy's name from dispatch.	Zimmerman Depo., 50:1-19, 52:7-16 182. The Plaintiffs do not dispute Officer Karschamroon called Andy by name, only the source of that information. Further, the cited deposition testimony does not indicate how many times Officer Karschamroon
Karschamroon. Andy was instructed to come down from the porch, which he eventually did, approaching Officer Karschamroon with his hands at his sides. 182. Karschamroon Decl., ¶¶ 8-10.	Karschamroon testified Andy responded immediately and never testified he yelled 3-4 times. Supporting Evidence: Exhibit B, Deposition of Daniel Karschamroon, pp. 245:15-25,246: 1-4.	called Andy's name. The remainder of Defendants' UMF remains unchallenged. In any event, the Plaintiffs' evidence does not constitute a genuine issue of material fact precluding summary judgment; it is immaterial in light of Andy's actual resistance while being detained, and the totality of the circumstances
		confronting the officers during that detention. Karschamroon Depo., 245:15-25,

		246:1-4
183. Officer Karschamroon could	183. Disputed: Karschamroon	183. Plaintiffs' evidence does not
Andy had a blank stare and appeared to	testified Andy had a confused, puzzled	constitute a genuine issue of material
be confused or unsure of what was	look on his face and appeared in need	fact precluding summary judgment; it is
going on. Andy stopped his approach	of medical help.	immaterial in light of Andy's actual
when he was approximately 20 feet from the officer, who then asked Andy to come closer. As Andy slowly approached to within 10 feet of Officer Karschamroon's location, he was instructed to stop. Andy stopped, but maintained his blank expression. 183. Karschamroon Decl., ¶¶ 11, 12	Karschamroon testified he told Andy to stop when he was 10-15 feet away and put his hands on his head and he complied. He never testified Andy ever stopped before being told to do so and was told to come closer. Supporting Evidence: Exhibit B, Deposition of Daniel Karschamroon, pp. 244: 15-25, 259: 1-7, 257: 15-22, 276: 19-25, 279: 14-16; Exhibit J,	resistance while being detained, and the totality of the circumstances confronting the officers during that detention. In any event, the deposition testimony of Officer Karschamroon cited by Plaintiffs is consistent with Defendants' UMF, namely, that Andy was instructed to stop either "10 feet" or "10-15 feet" from Officer Karschamroon's location. The cited deposition testimony does not include a
	Karschamroon GGPD Internal Affairs	question whether Andy stopped at any time prior to being so instructed, and
	Interview, pp. 5-6.	would be an immaterial variance
		regardless.

104 A 1	104 H. P. 4 I	104 11 11
184. Andy was instructed to put his	184. Undisputed	184. Undisputed.
hands on top of his head and turn		
around, and he slowly complied with		
the directive. Officer Karschamroon		
then approached Andy and told him to		
interlock his fingers, which he did.		
Andy never spoke, but did appear to		
understand what was being said. 184.		
Karschamroon Decl., $\P\P$ 13, 14		
185. Grabbing Andy's hands, Officer	185. Disputed: Neither the 911	185 Plaintiffs' evidence does not
Karschamroon sought to reassure him	Transcript nor the Dispatch CAD state	dispute that Officer Karschamroon
by saying "there's nothing wrong,"	anything about a "violent, mentally ill	attempted to calm and relax Andy, nor
"we're just here to help you," and to	male" trying to break into residence nor	the nature of the call received by
"calm down" and "relax." However, it	assaulting anyone. They both say this	Dispatch. Neither the 911 audio nor the
was important to get Andy secured and	was a 5150 call and Andy needs to be	CAD dispatch refer to "5150" as
handcuffed as the call indicated he was	taken to a hospital. The 911 caller	claimed by Plaintiffs, but do refer to
a violent mental individual with a	never said Andy had weapons, the	[Andy Tran] as being crazy, with
weapon.	dispatcher made a mistake. Given most	weapons, and having committed an
185. Karschamroon Decl., $\P\P$ 14	of Karschamroon's Declaration is	assault. Although requests were made
	vastly different than his Internal Affairs	to take [Andy] to the hospital, that does

		T
	Interview and Deposition Testimony	not constitute a genuine issue of
	anything he says he did is subject to	material fact precluding summary
	impeachment now for prior inconsitent	judgment; officer actions are judged as
	statements, thereby everything in his	to all information known or relied
	Declaration should be viewed with	upon.
	Suspicion.	Karschamroon Decl., $\P\P$ 1-5;
	Supporting Evidence: Defense	Gendreau Decl., $\P\P$ 1-5; Exhibit 2,
	Exhibit 2, Transcript/Audio 911;	Transcript/Audio 911 Recording;
	Defense Exhibit 3, Dispatch CAD.	Exhibit 3, Dispatch CAD.
186. As the first handcuff went on	186 Disputed: Officer Karschamroon	186. Plaintiffs argue semantics but do
Andy's right wrist, his hands	never told Internal Affairs Andy's	not dispute any material fact. Officer
immediately tensed up into fists.	hands ever balled into fists and he	Karschamroon testified at his
Officer Richard Gendreau arrived	testified repeatedly that Andy's hands	deposition that when a handcuff was
Officer Karschamroon was trying to	always remained interlocked after he	placed on Andy's right wrist, Andy
separate Andy's now-clenched fists.	was told to do so and he never saw	"tensed" and Officer Karschamroon
186. Karschamroon Decl., ¶ 15	Andy's hands ball into fists.	"could feel his fingers closing, kind of
	Karschamroon further testified he did	curling up from that interlocked
	not know whether Andy's tension was a	position" and "close up as if the fingers
	result of his attempt to follow the last	were curling." Officer Karschamroon
	command given to interlock his fingers.	also stated in his deposition that Andy

	He also testified Andy was never	was "actively resisting" and that he
	aggressive.	"thought it might turn violent."
	Supporting Evidence: Exhibit J,	Karschamroon Depo., 321:22-322:22,
	Karschamroon GGPD Internal Affairs	362:12-17, 366:14-19
	Interview, pp. 7-8; Exhibit B,	
	Deposition of Daniel Karschamroon,	
	pp. 261: 12-18, 264: 17-20, 265: 13-18,	
	268: 9-10, 270: 10-11, 281: 9-25, 284:	
	1-25, 285: 1-6.	
187. Officer Gendreau noticed the	187. Disputed: Officer Gendreau said	187. Plaintiffs do not dispute any
struggle to get Andy's arms behind his	he walked fast and did not run. Officer	material fact, argue semantics, and
back, so he immediately ran over to	Karschamroon testified he never	mischaracterize testimony. Mark
assist. Officer Gendreau was told that	struggled with Andy is Gendreau's	Zimmerman confirmed that Officer
one handcuff was secured, but that	presence nor tried to force Andy's	Gendreau approached at "a pretty fast
Andy was not allowing himself to be	hands behind his back. Karschamroon	pace." Officer Gendreau testified that
cuffed. Officer Karschamroon had a	never said Andy would not allow self	Officer Karschamroon told him that
concern that the encounter might turn	to be handcuff and said he told	Andy was tensed up and that he
violent due to Andy's reaction when the	Gendreau Andy was complying but	couldn't get Andy's hands behind his
first handcuff was placed on his wrist.	hands tensed when placed first	back into a handcuffing position. This
187. Karschamroon Decl., ¶¶ 16, 17;	handcuff on. Also Karschamroon and	is consistent with Officer
Gendreau Decl., ¶¶ 7, 8	Zimmerman disagree with most of	Karschamroon's testimony that he told

	what Gendreau said occured and both	Gendreau that Andy was complying
	Gendreau and Karschamroon have now	and tensed up after one handcuff was
	filed Declarations which are filed with	secured. Nothing in the cited testimony
	inconsistent statements from their	disputes that Andy continued to resist
	Internal Affairs Interviews and	after Gendreau arrived. Further, Mark
	Deposition Testimony their	Zimmerman testified that Officer
	Declarations should be viewed with	Gendreau did assist Officer
	suspicion.	Karschamroon by putting "his hands on
	Supporting Evidence: Exhibit C,	Andy's hands or on the other officer's
	Deposition of Richard Gendreau, pp.	hands or in that vicinity" for "about 20
	175: 1-25, 176: 1-25, 177: 1-5, 206:	seconds" in what appeared to him as an
	19-25; Exhibit B, Deposition of Daniel	effort to "keep more control" of Andy.
	Karschamroon, pp. 285: 11-13;	Zimmerman Depo., 92:19-25, 93:16-
	Karschamroon GGPD Internal Affairs	19, 209:7-22; Gendreau Depo.,
	Interview, pp. 9.	175:20-24; Karschamroon Depo.,
		285:11-14.
188. Andy continued to resist, failed	188. Disputed: Officer Karschamroon	188. Plaintiffs' evidence does not
to obey commands, and did not speak.	had full control of Andy and there was	dispute any material fact, and does not
Officer Gendreau could see that Andy's	never a struggle between the two.	indicate that Officer Karschamroon had
method of resistance was "complete	Officer Karschamroon testified he	full control of Andy or that there was
rigidity"; both of his arms were up, his	never struggled with Andy is	no resistance. Plaintiffs ignore Officer

fists were balled, and he was shaking.

Despite Officer Karschamroon's best efforts to pull Andy's arms down behind his back, his arms would not move.

188. Karschamroon Decl., ¶ 16
Gendreau Decl., ¶ 9

Gendreau's presence nor tried to force Andy's hands behind his back. Karschamroon never said Andy would not allow self to be handcuff and said he told Gendreau Andy was complying but hands tensed when placed first handcuff on. Also given Karschamroon and Zimmennan disagree with most of what Gendreau said occured and both Gendreau and Karschamroon have now filed Declarations which are filed with inconsistent statements from their Internal Affairs Interviews and Deposition Testimony their Declarations should be viewed with suspicion.

Supporting Evidence: Exhibit C,
Deposition of Richard Gendreau, pp.
175: 1-25, 176: 1-25, 177: 1-5,206: 1925; Exhibit B, Deposition of Daniel
Karschamroon, pp. 285: 11-13;

Karschamroon testimony that when a handcuff was placed on Andy's right wrist, Andy "tensed" and Officer Karschamroon "could feel his fingers closing, kind of curling up from that interlocked position" and "close up as if the fingers were curling." Officer Karschamroon also stated in his deposition that Andy was "actively resisting" by not allowing his arms to be pulled apart and providing tension to pull his arms together, and that he "thought it might turn violent." Nothing in Plaintiffs' cited testimony disputes that Andy continued to resist after Gendreau arrived. Further, Mark Zimmerman testified that Officer Gendreau did assist Officer Karschamroon by putting "his hands on Andy's hands or on the other officer's hands or in that vicinity" for "about 20

	Karschamroon GGPD Internal Affairs	seconds" in what appeared to him as an
	Interview, pp. 9.	effort to "keep more control" of Andy.
		Karschamroon Depo., 321:22-322:22,
		280:12-23, 362:12-17, 366:14-19,
		Zimmerman Depo., 92:19-25, 93:16-
		19, 209:7-22
189 To prevent a possible escape,	189. Disputed: Officer Karschamroon	189. Plaintiffs do not dispute any
Officer Gendreau moved in front of	testified he was a foot from Andy and	material fact precluding summary
Andy. From that position, he could see	1-3 feet from Gendreau and He never	judgment. The assertion that Andy did
that Andy was shaking and he began to	heard Andy growl or see his foaming at	not try to escape does dispute Officer
growl. Andy was not blinking, his	the mouth, or see Andy shaking other	Gendreau's motivation for positioning
pupils appeared to be dilated, and he	than when Karschamroon shook Andy	himself in front of Andy. Further,
had saliva coming from the corner of	hands, which moved, to let Andy know	Officer Karschamroon was positioned
his mouth, almost as though he was	he was still behind him. Gendreau	behind Andy, and was not in a position
foaming at the mouth. Officer	testified he never feared Andy would	to see Andy's face at the time he was
Gendreau felt like Andy was looking	flee or run. Karschamroon testified	tased. As to the issue of Andy
straight through him.	Andy never made a movement	growling, Mark Zimmerman testified
189. Karschamroon Decl., ¶ 16	consisting with fleeing or running away	that although he never saw Andy's lips
Gendreau Decl., $\P\P$ 10, 11	Supporting Evidence: Exhibit B,	moving, he heard some audible things
	Deposition of Daniel Karschamroon,	coming out of his mouth. Zimmerman
	pp. 261: 12-18, 264: 17-20, 284: 1-25,	also testified that he could see subtle

	285: 1-6, 330: 11-15; Declaration of	movement going on between the
	Daniel Karschamroon, pp. 384: 18,	officers and Andy and that there could
	385: 1-5; Exhibit C, Deposition of	have been a "whole 'nother [sic] set of
	Richard Gendreau, pp. 174: 14-17;	scenarios going on" that he did not see.
	176: 1-25, 177: 1-10,182: 2-23,187: 1-	Karschamroon Depo., 348:9-15,
	8,220: 1-24, 225: 17-24, 266: 1-10.	355:16-19, Zimmerman Depo., 217:3-
		9, 222:11-223:13, 276:22-25
190. In a casual manner, Officer	190. Disputed: Officer Karschamroon	190. Plaintiffs do not dispute
Gendreau said words to the effect of,	testified the only thing he heard	Defendants' UMF that the officers
"Hey, dude, just calm down," and	Gendreau say was "Hey, dude, calm	attempted to relax and calm Andy while
advised Andy to relax, put his hands	down." Gendreau never ackowledged	attempting to secure him, but rather
behind his back, and that "we're not	he said "dude calm down".	dispute the exact words spoken. This
here to hurt you." Officer	Karschamrron testified Gendreau never	does not create a genuine issue of
Karschamroon was reminding Andy to	told Andy to put his hands behind his	material fact precluding summary
relax as well, but he was also shaking	back and the only shaking he saw from	judgment. Further, it is immaterial that
Andy's still clenched hands to let him	Andy was Karschamroon shaking	Officer Karschamroon may not have
know he still needed to be handcuffed.	Andy to let him know he was there.	said anything to Andy about being
190. Karschamroon Decl., $\P\P$ 19, 20;	Karschamroon testifed he never said	handcuffed since the act of attempting
Gendreau Decl., $\P\P$ 12, 13	anything to Andy about being	to handcuff him established the
	handcuffed.	officer's intention. Officer
	Supporting Evidence: Exhibit B,	Karschamroon's deposition testimony

Deposition of Daniel Karschamroon, that Andy was not allowing his arms to pp. 282, 345: 1-18, 268: 19-23, 269: 1be pulled apart and was providing 4; 419, Exhibit B, Deposition of Daniel tension to pull his arms together demonstrates resistance to that Karschamroon, pp. 328: 1-7,330: 11-15/17-25, 337: 10-16, 340: 8-9, 341: 7intention. 16. Karschamroon Depo., 321:22-322:22, 280:12-23, 362:12-17, 366:14-19 191. Andy continued to ignore the 191. **Disputed:** Gendreau said he did 191. Plaintiffs do not dispute any officers' orders, and concern grew that not believe Andy understood anything material fact precluding summary judgment and mischaracterize the dangling handcuff could be used as he said so how can he claim Andy a weapon if Andy decided to swing his ignored an order? Further, testimony. Officer Karschamroon did arm. Both officers then attempted to Karschamroon testified that neither not testify that "relax" and "calm down" were not lawful orders. pry Andy's arms down but could not "relax" or "dude calm down" were overcome his flexed/locked position. A lawful orders. Both Karshamroon and Although he did testify he had not pain compliance technique performed received training that such commands Zimmennan said Gendreau never by Officer Gendreau did nothing. were lawful orders, he stated that the struggled with Andy except to taser 191. Karschamroon Decl., $\P\P$ 21, 22; him. Karschamroon testified repeatedly commands given were appropriate Gendreau Decl., ¶¶ 12, 14-16 he never saw Gendreau touch Andy given the goal of relaxing Andy. and did not struggle either alone or Officer Karschamroon also stated in his with Gendreau to get Andy's arm deposition that Andy was "actively

behind his back.

Karschamroon testified he always had ahold of the loose handcuff so it could not be dangling and used as a weapon. Again, given the many new statements which are completely inconsitent with statements made to Internal Affairs and during Deposition testimony puts the credibilty of Karschamroon and Gendreau is great doubt and their Declarations should be viewed with extreme caution.

Supporting Evidence: Exhibit B,
Deposition of Daniel Karschamroon,
pp. 273: 8-11, 274, 292: 17-23, 293: 1,
331: 16-25, 332: 18-21, 333: 7-11;
Karschamroon GGPD Internal Affairs
Interview, pp. 7-8.; Exhibit A,
Deposition of Mark Zimmerman, pp.
79:11-20,80: 10-16, 81: 4-5, 83: 1825,85:1-10,87: 3-7/16-23,97: 5-6, 100:

resisting" by not allowing his arms to be pulled apart and providing tension to pull his arms together, and that he "thought it might turn violent." Nothing in Plaintiffs' cited testimony disputes that Andy continued to resist after Gendreau arrived. Further, Mark Zimmerman testified that Officer Gendreau did assist Officer Karschamroon by putting "his hands on Andy's hands or on the other officer's hands or in that vicinity" for "about 20 seconds" in what appeared to him as an effort to "keep more control" of Andy. Nothing in Zimmerman's testimony disputes the officers' account of Andy's resistance other than his own speculation. Zimmerman testified that he could see subtle movement going on between the officers and Andy and that there could have been a "whole 'nother

1-25, 102: 4-9/20-24,150: 20-25, 151:	[sic] set of scenarios going on" that he
9-11, 197:20-25,198: 1-5,209:23-	did not see. He could not hear what
25,222:17-25,224: 6-12, 276: 10-	was being said, and although his
20,277: 1-4, 278: 18-21.	eyesight is admittedly impaired, he
	never wears his prescription contact
	lens. Zimmerman observed the
	incident from a distance of
	approximately 40-50 feet could not tell
	what small, detailed movements were
	occurring. He does not know whether
	the officers tried to move Andy's hands
	from the top of his head, and admits
	that many things could have been said
	or done which he could not observe or
	hear. While Zimmerman testified that
	Andy's hands were on his head at all
	times, he cannot say whether there was
	any kind of struggle
	Karschamroon Depo., 321:22-322:22,
	280:12-23, 283:20-284:20, 362:12-17,
	366:14-19, Zimmerman Depo., 22:3-7,
•	•

		82:11-18, 92:19-25, 93:16-19, 96:2-10,
		100:7-20, 162:11-19, 187:3-11,
		200:11-24, 201:6-12, 209:7-22, 217:3-
		9, 222:11-223:13, 276:22-25, 287:25-
		288:12.
192. Officer Gendreau thought that if a	192. Disputed: Karschamroon and	192. Plaintiffs' evidence does not
fight ensued, it was going to be a bad	Zimmerman both testified Gendreau	dispute any material fact. Plaintiffs
one given the strength that Andy had	never struggled to force Andy's hands	ignore Officer Karschamroon's
exhibited when resisting both officers	behind back. Karschamroon said	testimony that when a handcuff was
attempt to lower his arms. Officer	Gendreau never touched Andy.	placed on Andy's right wrist, Andy
Karschamroon was similarly concerned	Karschamroon testified when he shook	"tensed" and Officer Karschamroon
about officer safety.	Andy's hands they moved so the	"could feel his fingers closing, kind of
192. Karschamroon Decl., ¶ 21;	extraordinary strength Gendreau said	curling up from that interlocked
Gendreau Decl., ¶ 19	Andy had is disputed by	position" and "close up as if the fingers
	Karschamroon.	were curling." Officer Karschamroon
	Supporting Evidence: Exhibit B,	also stated in his deposition that Andy
	Deposition of Daniel Karschamroon,	was "actively resisting" by not allowing
	pp.273: 8-11 ,274, 292: 17-23, 293: 1,	his arms to be pulled apart and
	331: 16-25, 332: 18-21, 333: 7-11;	providing tension to pull his arms
	Karschamroon GGPD Internal Affairs	together, and that he "thought it might
	Interview, pp. 7-8.; Exhibit A,	turn violent." Nothing in Plaintiffs'

Deposition of Mark Zimmerman, pp.79: 11-20, 80: 10-16, 81:4-5, 83: 18-25, 85: 1-10, 87: 3-7/16-23, 97: 5-6, 100: 1-25, 102: 4-9/20-24, 150: 20-25, 151: 9-11, 197:20-25, 198: 1-5, 209 :23-25, 222: 17-25, 224: 6-12, 276: 10-20, 277: 1-4, 278: 18-21.

cited testimony disputes that Andy continued to resist after Gendreau arrived. Further, Mark Zimmerman testified that Officer Gendreau did assist Officer Karschamroon by putting "his hands on Andy's hands or on the other officer's hands or in that vicinity" for "about 20 seconds" in what appeared to him as an effort to "keep more control" of Andy. Nothing in Zimmerman's testimony disputes the officers' account of Andy's resistance other than his own speculation. Karschamroon Depo., 321:22-322:22, 280:12-23, 362:12-17, 366:14-19, Zimmerman Depo., 22:3-7, 82:11-18, 92:19-25, 93:16-19, 96:2-10, 100:7-20, 162:11-19, 187:3-11, 200:11-24, 201:6-12, 209:7-22, 217:3-9, 222:11-223:13, 276:22-25, 287:25-288:12.

193. As Andy continued to resist officer commands by remaining rigid and non-responsive, Officer Gendreau decided to take out his Taser. Andy was informed several times that if he did not comply, he would be tased. Andy continued to resist, so Officer Gendreau deployed his taser once in Andy's thigh for a cycle of five seconds.

193. Karschamroon Decl., $\P\P$ 22-25; Gendreau Decl., $\P\P$ 20-23

193. **Disputed:** Karschamroon testified after he told Andy to interlock his fingers Andy was only told to relax or "dude calm down" which Karschamroon testified were not lawful orders. Gendreau testified he did pot believe Andy understood anything he said so it would be difficult for him to "resist" non lawful "commands". Karschamroon testified Gendreau told him "Danny I'm just going to Tase him" and Karschamroom testified Gendreau never told Andy he was going to be tasered. Zimmerman said Gendreau stepped to Andy's side and immediatly tasered him.

Supporting Evidence: Exhibit A,
Deposition of Mark Zimmerman, pp.
108: 1-11/18-24, 110: 1-13/22-25, 111:
10-17/18-22, 112: 25, 121: 6-11/15-24,
123: 15-25, 240: 21-25, 242: 13-25,

193 Plaintiffs do not dispute any material fact precluding summary judgment and mischaracterize testimony. Officer Karschamroon testified that Officer Gendreau did warn Andy that he would be tased if he did not calm down, and Zimmerman testified that Officer Gendreau had his hands on top of Andy's hands for about 20 seconds before stepping to the side to taser him.

Karschamroon Depo., 331:6-12, Zimmerman Depo., 208:8-209:17

	243: 11-16, 244: 12-15, 246: 7-19;	
	Exhibit B, Deposition of Daniel	
	Karschamroon, pp. 397: 7-8; Exhibit D,	
	Deposition of Richard Fukumoto,	
	M.D., pp. 90: 13-16, 258: 16-19, 259:	
	2-23, 260: 1-10, 261: 13-15, 264: 21-	
	24, 266: 13-22, 268:6-22, 280: 19-25,	
	281: 10-25, 282: 7-15, 283: 4-16/21-	
	23; Exhibit E, Deposition of Bua Thi	
	Phan, pp. 243.1: 16-18; 256.1: 2-5.	
194. Prior to deploying the taser,	194. Disputed: GGPD General Order	194. Plaintiffs do not dispute any
Officer Gendreau also attempted to	5.31 states the IVS Unit must be	material fact precluding summary
activate his audio recording system and	activated when a detention was going	judgment. The General Orders are
the one in his police unit, although he	to occur. Gendreau testified he saw	simply "guidelines," and the purpose of
was too far away for remote activation.	Karschamroon detaining Andy when he	the In-Car Video System (IVS) is to
Based on the nature of the call and	arrived yet failed to activate his IVS	provide an accurate, unbiased
rapidly evolving events, activating a	Unit; Karschamroon testified he	audiovisual record of enforcement
recorder or his in-unit video during this	thought IVS Unit activation was	related and non-criminal incidents that
incident was "not at the forefront" of	completely within his discretion. No	will enhance criminal prosecutions and
Officer Karschamroon's thoughts.	where in the GGPD General Orders	limit civil liabilities. The policy is non-
194. Karschamroon Decl., ¶ 41;	does it indicate "rapidly evolving	punitive in nature, and no disciplinary

Gendreau Decl., ¶ 20	events" warrant ignoring orders. The	action for violations of this policy will
	fact Gendreau claims to have attempted	be proposed unless the employee
	to activate his IVS Unit shows he had	refuses either actively or passively, as
	time and should have called for a	demonstrated by repeated instances of
	supervisor and medics before tasering	his/her failure. Summoning Fire
	Andy as required by GGPD General	Department Paramedics before the use
	Order 2.25. Further, given the major	of a Taser is only recommended, if
	credibility issues of all involved	practical, under the circumstances.
	officers Plaintiffs do not believe the	General Order 2.24, 5.31, General
	Court should not accept the IVS	Order, "Statement by the Chief of
	recordings were destroyed. GGPD	Police"
	General Order 5.31 states if IVS fails to	
	activate a work order must be	
	completed and Gendreau never did the	
	required paperwwork.	
	Supporting Evidence: Exhibit C,	
	Deposition of Richard Gendreau, pp.	
	97-98, 109: 20-23; Exhibit H, GGPD	
	General Order 2.24, 5.31.	
195. Officer Gendreau was trained that	195. Disputed: Gendreau testified he	195. Plaintiff's evidence does not
one of the best ways to get a subject on	believed that Andy was under the	constitute a genuine issue of material

the ground is to tase them in the leg.

His goal was to take Andy into custody without any further risk of injury to Andy, Officer Karschamroon or himself.

195. Gendreau Decl., ¶ 22

influence of a Central Nervous System stimulant before he tasered Andy and knew and had been trained that tasering Andy could cause his immediate death. Given theses facts it is difficult to believe Gendreau did not believe to injure Andy. Further, GGPD General Orders state a medic and supervisor should be called prior to tasering a subject. Gendreau testified he tried to activate his IVS and Lux testified it would have take 1-3 seconds to call for a medic and supervisor. Gendreau said Andy was not resisting, being aggressive or looking like would flee when he wass tasered so there was no rush to taser Andy. Andy was therefore a non comabative subject per GGPD General Order 2.6 and Lux testified he trained his students including Gendreau not taser such subjects.

fact precluding summary judgment; it is immaterial in light of Andy's actual resistance while being detained, and the totality of the circumstances confronting the officers during that detention. Officer Karschamroon testified that he did not feel it was necessary to take out any weapon only up to the point of placing the first handcuff on Andy's wrist. Officer Gendreau testified that Andy's conduct and appearance was indicative of someone who potentially is going to throw a punch. Plaintiffs' misrepresent the testimony of Benedict Lux, which was based on incomplete hypothetical questioning and not on facts relevant to this case.

Karschamroon Depo., 251:21-252:6, Gendreau Depo., 178:5-16.

Karschamroon testified he saw no reason to take out any weapons against Andy and had no idea why Gendreau was tasering Andy. Lux testified Karshamroon as the first officer on scene should have detennined why Gendreau was going to taser Andy. Supporting Evidence: Exhibit B, Deposition of Daniel Karschamroon, pp. 251: 17-25, 252: 1-118, 355: 21-24, 357: 3-18, 360: 1-6; Exhibit C, Deposition of Richard Gendreau, pp. 96: 1-16,174: 14-17; 176: 1-25, 177: 1-10, 182: 2-23, 187: 1-8, 220: 1-24, 225: 17-24, 266: 1-10, 327: 17-22, 328: 1-14/20-25, 329: 1-18; Exhibit F, Deposition of Benedict Lux, pp. 176: 15-22,177:7-20,178:5-14,179: 5-12, 204: 1-25, 205: 1-15, 206: 9-22, 209: 1-25, 210: 8-18, 211: 9-11, 212: 13-18, 244: 14-25, 247: 21-25, 252: 21-25, pp.

	253: 1-3/5-12, 254, 255: 1-5/12-15;	
	Exhibit H, GGPD General Order 2.24,	
	2.6; Exhibit J, Karschamroon GGPD	
	Internal Affairs Interview, pp. 15.	
196. Once Andy was tased, he began to	196. Disputed: Zimmerman testified	196. Plaintiff's evidence does not
fall backward toward Officer	Andy fell hard to the ground after the	constitute a genuine issue of material
Karschamroon, who caught him and	tasering like a "sack of potatoes" and	fact precluding summary judgment; it is
laid him forward onto the ground.	saw nothing consistent with Andy	immaterial in light of Andy's actual
Andy also released his grip, and once	being gently placed on the ground.	resistance while being detained, and the
the taser cycle stopped, the officers	Zimmeman testified Andy was a fat	totality of the circumstances
were able to bring his left arm behind	guy and the officers could not have	confronting the officers during that
his back and apply the other handcuff to	placed him gently down if they wanted.	detention. Zimmerman has had no
secure his arms.	Zimmerman testified when Andy hit	medical training. Although his eyesight
196. Karschamroon Decl., ¶ 26;	the ground was dead and never moved	is admittedly impaired, he never wears
Gendreau Decl., $\P\P$ 24, 25	again on his own.	his prescription contact lens.
	Supporting Evidence: Exhibit A,	Zimmerman observed the incident from
	Deposition of Mark Zimmerman, pp.	a distance of approximately 40-50 feet
	108: 1-11/18-24, 110: 1-13, 240: 21-	and could not tell what small, detailed
	25, 242: 13-25,243: 11-16.	movements were occurring.
		Zimmerman testified that it was
		possible that Andy was breathing after

		being tased and that he just did not
		observe it, and that his belief that Andy
		was dead is not based on any actual
		evidence
		Zimmerman Depo., p. 22:3-7, 162:11-
		19, 180:20-21; 201:6-12, 293:23-
		294:12
197. At approximately 11:38 a.m.,	197. Disputed: GG Fire Department	197. Plaintiff's evidence does not
Officer Gendreau advised over his	paramedics were not dispached until	constitute a genuine issue of material
police radio that the situation was	11:39:38. Per Lux and GGPD General	fact precluding summary judgment; it
stable, but that Andy had been tased and	Order 2.24 states medics should be	remains undisputed that GG Fire
he requested Garden Grove Fire	called before any tasering and a	Department paramedics were promptly
Department to respond to examine	supervisor must be called before a	dispatched after Andy was tased.
Andy per their protocol when a subject	tasering. Sergeant Wagner was not	General Orders are guidelines and not
is tased. At approximately 11:39 a.m.,	requested until 11 :46.	an independent mechanism to pursue
Garden Grove Fire Department was	Supporting Evidence: Exhibit D,	civil liability.
dispatched to the incident scene in	Deposition of Richard Fukumoto,	General Orders, "Statement by the
reference to Andy being tased.	M.D., pp. 90: 13-16, 282: 7-15, 283:4-	Police Chief"
197. Karschamroon Decl., ¶ 27;	16/21-23; Exhibit F, Deposition of	
Gendreau Decl., ¶ 26; Exhibit 3	Benedict Lux, pp. 249: 15-25, 250: 9-	
Dispatch CAD	10, 260: 13-25, 262: 15-25, 263: 1-3;	

	Exhibit H, GGPD General Order 2.24;	
	Exhibit K., Sergeant Wagner's report.	
198. As he was handcuffed and on the	198. Disputed: Zimmerman testified	198. Plaintiff's evidence does not
ground, Andy looked in various	Andy fell hard to the ground after the	constitute a genuine issue of material
directions. Officer Gendreau continued	tasering like a "sack of potatoes" and	fact precluding summary judgment; it is
to instruct him to relax, and informed	saw nothing consistent with Andy	immaterial in light of the undisputed
him they were in the process of getting	being gently placed on the ground.	fact that GG Fire Department
him medical attention. When asked if	Zimmeman testified Andy was a fat	Paramedics were promptly summoned.
he was doing okay, Andy remained	guy and the officers could not have	In any event, Zimmerman has had no
unresponsive but continued to look	placed him gently down if they wanted.	medical training, and although his
around.	Zimmerman testified when Andy hit	eyesight is admittedly impaired, he
198. Karschamroon Decl., ¶ 30;	the ground was dead and never moved	never wears his prescription contact
Gendreau Decl., ¶ 27	again on his own. Karschamroon	lens. Zimmerman observed the
	testifed Gendreau opened up Andy's	incident from a distance of
	eyes and Karschamroon could not tell	approximately 40-50 feet and could not
	if Andy was breathing. Zimmerman	tell what small, detailed movements
	said he saw Gendreau slapping Andy's	were occurring. Zimmerman testified
	face and saying "to stop faking". Bua	that it was possible that Andy was
	Phan also testified Andy died	breathing after being tased and that he
	immediately after the tasering. Dr.	just did not observe it, and that his
	Fukumoto testified the evidence is	belief that Andy was dead is not based

	consistent with Andy being dead	on any actual evidence. Dr. Fukumoto
	immediately after he saw tasered.	testified that he has no way of knowing
	Supporting Evidence: Exhibit A,	when Andy died and that he relies on
	Deposition of Mark Zimmerman, pp.	the physician's death pronouncement as
	108: 1-11/18-24, 110: 1-13/22-25, 111:	to the time of death.
	10-17/18-22, 112: 25, 121: 6-11/15-	Zimmerman Depo., 22:3-7, 162:11-19,
	24,123: 15,- 25, 240: 21-25, 242: 13-	180:20-21; 201:6-12, 293:23-294:12;
	25, 243: 11-16,244: 12-15,246: 7-19;	Fukumoto Depo., 187:19-188:5,
	Exhibit B, Deposition of Daniel	258:7-259:25
	Karschamroon, pp. 397: 7-8; Exhibit D,	
	Deposition of Richard Fukumoto,	
	M.D., pp. 90: 13-16, 258: 16-19, 259:2-	
	23, 260: 1-10, 261: 13-15, 264: 21-24,	
	266: 13-22, 268:6-22, 280: 19-25, 281:	
	10-25, 282: 7-15, 283: 4-16/21-23;	
	Exhibit E, Deposition of Bua Thi Phan,	
	pp. 243.1: 16-18; 256.1: 2-5.	
199. After the tasing, a third officer	199. Disputed: Zimmerman testified	199. Plaintiff's evidence does not
arrived on scene, Officer Amir El-Farra.	Andy fell hard to the ground after the	constitute a genuine issue of material
The officers decided to roll Andy over	tasering like a "sack of potatoes" and	fact precluding summary judgment; it is
on his back to observe him from the	saw, nothing consistent with Andy	immaterial in light of the undisputed

front. His eyes were closed, but a check by Officer Gendreau found they were dilated. Because of that and Andy's labored breathing, the officers decided to sit him up against Officer El-Farra's leg, thinking it might help with his breathing and help snap him out of the trance he appeared to be in.

199. Karschamroon Decl., $\P\P$ 29-34; Gendreau Decl., $\P\P$ 31-32; El-Farra Decl., $\P\P$ 6-8 being gently placed on the ground. Zimmeman testified Andy was a fat guy and the officers could not have placed him gently down if they wanted. Zimmerman testified when Andy hit the ground was dead and never moved again on his own. Zimmerman testified when the police rolled Andy against an officers legs he could clearly see Andy chest and stomach and he was clearly not breathing. Karschamroon testifed Gendreau opened up Andy's eyes and Karschamroon could not tell if Andy was breathing. Zimmerman said he saw Gendreau slapping Andy's face and saying "to stop faking". Bua Phan also testified Andy died immediately after the tasering.

Dr. Fukumoto testified the evidence is consistent with Andy being dead immediately after he saw tasered.

fact that GG Fire Department Paramedics were promptly summoned. In any event, Zimmerman has had no medical training, and although his eyesight is admittedly impaired, he never wears his prescription contact lens. Zimmerman observed the incident from a distance of approximately 40-50 feet and could not tell what small, detailed movements were occurring. Zimmerman testified that it was possible that Andy was breathing after being tased and that he just did not observe it, and that his belief that Andy was dead is not based on any actual evidence. Dr. Fukumoto testified that he has no way of knowing when Andy died and that he relies on the physician's death pronouncement as to the time of death.

Zimmerman Depo., 22:3-7, 162:11-19,

	Supporting Evidence: Exhibit A,	180:20-21; 201:6-12, 293:23-294:12;
	Deposition of Mark Zimmennan, pp.	Fukumoto Depo., 187:19-188:5,
	108: 1-11/18-24, 110: 1-13/22-25, 111:	258:7-259:25
	10-17/18-22,112: 25, 121: 6-11/15-24,	
	123: 15-25; 240: 21-25; 242: 13-25,	
	243: 11-16, 244: 12-15, 246: 7-19;	
	Exhibit B, Deposition of Daniel	
	Karschamroon, pp. 397: 7-8; Exhibit D,	
	Deposition of Richard Fukumoto,	
	M.D., pp. 90: 13-16, 258: 16-19, 259:	
	2-23, 260: 1-10, 261: 13-15, 264: 21-	
	24,266: 13-22, 268:6-22, 280: 19-25,	
	281: 10-25, 282: 7-15, 283: 4-16/21-	
	23; Exhibit E, Deposition of Bua Thi	
	Phan, pp. 243.1: 16-18; 256.1: 2-5.	
200. Given Andy's dilated pupils in	200. Disputed: Gendreau testified he	200. Plaintiff's evidence does not
bright sunlight and his rapid pulse,	believed that Andy was under the	constitute a genuine issue of material
Officer Gendreau did consider that he	influence of a Central Nervous System	fact precluding summary judgment; it is
may be under the influence of a	stimulant before he tasered Andy and	immaterial in light of Andy's actual
controlled substance, but he never had	knew and had been trained that tasering	resistance while being detained, and the
the opportunity to do a full evaluation.	Andy could cause his immediate death.	totality of the circumstances

200. Gendreau Decl., ¶ 37

Given theses facts it is difficult to believe Gendreau did not believe to injure Andy. Further, GGPD General Orders state a medic and supervisor should be called prior to tasering a subject. Gendreau testified he tried to activate his IVS and Lux testified it would have take 1-3 seconds to call for a medic and supervisor. Gendreau said Andy was not resisting, being aggressive or looking like would flee when he wass tasered so there was no rush to taser Andy. Andy was therefore a non comabative subject per GGPD General Order 2.6 and Lux testified he trained his students including Gendreau not taser such subjects.

Karschamroon testified he saw no reason to take out any weapons against Andy and had no idea why Gendreau was tasering Andy. Lux testified

confronting the officers during that detention. Officer Karschamroon testified that he did not feel it was necessary to take out any weapon only up to the point of placing the first handcuff on Andy's wrist. Officer Gendreau testified that Andy's conduct and appearance was indicative of someone who potentially is going to throw a punch. Plaintiffs' misrepresent the testimony of Benedict Lux, which was based on incomplete hypothetical questioning and not on facts relevant to this case.

Karschamroon Depo., 251:21-252:6, Gendreau Depo., 178:5-16.

Karshamroon as the first officer on scene should have detennined why Gendreau was going to taser Andy. Supporting Evidence: Exhibit B, Deposition of Daniel Karschamroon, pp. 251: 17-25, 252: 1-118, 355: 21-24, 357: 3-18, 360: 1-6; Exhibit C, Deposition of Richard Gendreau, pp. 96: 1-16,174: 14-17; 176: 1-25, 177: 1-10, 182: 2-23, 187: 1-8, 220: 1-24, 225: 17-24, 266: 1-10, 327: 17-22, 328: 1-14/20-25, 329: 1-18; Exhibit F, Deposition of Benedict Lux, pp. 176: 15-22,177:7-20,178:5-14,179: 5-12, 204: 1-25, 205: 1-15, 206: 9-22, 209: 1-25, 210: 8-18, 211: 9-11, 212: 13-18, 244: 14-25, 247: 21-25, 252: 21-25, pp. 253: 1-3/5-12, 254, 255: 1-5/12-15; Exhibit H, GGPD General Order 2.24, 2.6; Exhibit J, Karschamroon GGPD Internal Affairs Interview, pp. 15.

201. As Andy was seated upright and leaning against Officer El-Farra's leg, his breathing was observed to be labored but no officer believed the situation to be critical. Officer Karschamroon saw nothing to suggest a life-threatening situation, Officer Gendreau "felt comfortable" upon hearing the approach of the medics, and Officer El-Farra could see Andy's chest rising and falling.

201. Karschamroon Decl., \P 35; Gendreau Decl., \P \P 33-34; El-Farra Decl., \P \P 10

201. **Disputed:** Zimmerman testified Andy fell hard to the ground after the tasering like a "sack of potatoes" and saw, nothing consistent with Andy being gently placed on the ground. Zimmeman testified Andy was a fat guy and the officers could not have placed him gently down if they wanted. Zimmerman testified when Andy hit the ground was dead and never moved again on his own. Zimmerman testified when the police rolled Andy against an officers legs he could clearly see Andy chest and stomach and he was clearly not breathing. Karschamroon testifed Gendreau opened up Andy's eyes and Karschamroon could not tell if Andy was breathing. Zimmerman said he saw Gendreau slapping Andy's face and saying "to stop faking". Bua Phan also testified Andy died immediately after

201. Plaintiff's evidence does not constitute a genuine issue of material fact precluding summary judgment; it is immaterial in light of the undisputed fact that GG Fire Department Paramedics were promptly summoned. In any event, Zimmerman has had no medical training, and although his eyesight is admittedly impaired, he never wears his prescription contact lens. Zimmerman observed the incident from a distance of approximately 40-50 feet and could not tell what small, detailed movements were occurring. Zimmerman testified that it was possible that Andy was breathing after being tased and that he just did not observe it, and that his belief that Andy was dead is not based on any actual evidence. Dr. Fukumoto testified that he has no way of knowing

the tasering.

Dr. Fukumoto testified the evidence is consistent with Andy being dead immediately after he saw tasered.

Dr. Fukumoto also testified that if officers did see labored or heavy breathing they should have known

Andy was in cardiad distress and taken off the handcuffs at a minimum.

Supporting Evidence: Exhibit A,
Deposition of Mark Zimmerman,
pp.108: 1-11/18-24, 110: 1-13/22-25,
111: 10- 17/18-22, 112: 25, 121: 611/15-24, 123: 15-25, 240: 21-25, 242:

13-25, 243: 11-16, 244: 12-15, 246: 7-19; Exhibit B, Deposition of Daniel

Karschamroon, pp. 397: 7-8; Exhibit D,

Deposition of Richard Fukumoto,

M.D., pp. 90: 13-16, 258: 16-19, 259:

2-23, 260: 1-10, 261: 13-15, 264: 21-

24, 266: 13-22, 268:6-22, 280: 19-25,

when Andy died and that he relies on the physician's death pronouncement as to the time of death.

Zimmerman Depo., 22:3-7, 162:11-19, 180:20-21; 201:6-12, 293:23-294:12; Fukumoto Depo., 187:19-188:5, 258:7-259:25

	281: 10-25, 282: 7-15, 283: 4-16/21-	
	23; Exhibit E, Deposition of Bua Thi	
	Phan, pp. 243.1: 16-18; 256.1: 2-5.	
202. Officer Gendreau asked Officer	202. Zimmerman testified all police	202. Plaintiff's evidence does not
El-Farra to stay with Andy as he and	officers arrived outside until the	constitute a genuine issue of material
Officer Karschamroon ascertained the	paramedics arrived looking	fact precluding summary judgment; it is
welfare or condition of the calling party	increasingly more concerned because	immaterial in light of the undisputed
or family considering the nature of the	Andy was not moving. Per Exhibit 3	fact that GG Fire Department
call and the need to determine if anyone	of Defendants Motion El-Farra was on	Paramedics were promptly summoned.
had been injured or attacked by Andy.	scene at 11:38 and Paramedics did not	In any event, Zimmerman "thinks"
Officer El-Farra estimates that he was	arrive until 11:44 so El-Farra was on	Officers Karschamroon and Gendreau
in front of the residence, with Andy, for	scene for several minutes prior to the	remained with Andy until the
approximately 15 to 20 seconds	paramedics arrival.	paramedics arrived but concedes he lost
thereafter prior to medics arriving.	Supporting Evidence: Exhibit A,	track of them.
202. Karschamroon Decl., ¶¶ 35-36;	Deposition of Mark Zimmerman, pp.	Zimmerman Depo., 264:18-23, 267:12-
Gendreau Decl., ¶ 33-34; El-Farra	123: 15-25,246: 7-19, 251: 4, 264: 18-	14, 307:21-25
Decl., ¶ 11-12	25,265: 5-14118-25,267: 6-8.; Defense	
	Exhibit 3, Dispatch CAD.	
203. Officers Gendreau and	203. Disputed: Zimmerman testified	203. Plaintiff's evidence does not
Karschamroon then contacted Andy's	all police officers arrived outside until	constitute a genuine issue of material
family inside the residence, but it	the paramedics arrived looking	fact precluding summary judgment; it is

appeared the only individual who sustained an injury was Plaintiff Bua Thi Phan, who had sustained a scraped elbow. Her injury was measured and photographed.

203. Karschamroon Decl., ¶¶37-38;
Gendreau Decl., ¶ 35; Exhibit 4,
Photograph of Injury; Exhibit 5,
Photograph of Screen

increasingly more concerned because Andy was not moving. Per Exhibit 3 of Defedants Motion EI-Farra was on scene at 11:38 and Paramedics did not arrive until 11:44 so EI-Farra was on scene for minutes prior to the paramedics arrival. There has been no testimony by Karschamroon or Gendreau that they ever personally observed any injury nor photographed any injury to Bua Phan so there is a complete lack of foundation for this "new" testimony. Again, another example of recreating history by Karschamroon and Gendreau and another reason to disbelieve both of their Declarations. Further, the attached photographs were submitted late and beyond the Motion Cut-Off time. Supporting Evidence: Exhibit A,

immaterial in light of the undisputed fact that GG Fire Department
Paramedics were promptly summoned.
In any event, Zimmerman "thinks"
Officers Karschamroon and Gendreau remained with Andy until the paramedics arrived but concedes he lost track of them. Further, Plaintiffs do not deny that Bua Thi Phan was injured in a struggle with Andy.

Zimmerman Depo., 264:18-23, 267:12-14, 307:21-25

Deposition of Mark Zimmerman, pp.

	123: 15-25,246: 7-19, 251: 4,264: 18-	
	25,265: 5-14/18-25,267: 6-8.; Defense	
	Exhibit 3, Dispatch CAD.	
204. An approaching medic was	204. Disputed: Zimmerman testified	204. Plaintiff's evidence does not
informed by Officer El-Farra about the	Andy fell hard to the ground after the	constitute a genuine issue of material
tasing and Andy's labored breathing.	tasering like a "sack of potatoes" and	fact precluding summary judgment; it is
The medic checked for Andy's pulse	saw nothing consistent with Andy	immaterial in light of the undisputed
and informed Officer El-Farra that he	being gently placed on the ground.	fact that GG Fire Department
needed to start CPR. This took Officer	Zimmerman testified Andy was a fat	Paramedics were promptly summoned.
El-Farra completely by surprise. When	guy and the officer could not have	In any event, Zimmerman has had no
he had looked away from Andy to	placed him gently down if they wanted.	medical training, and although his
speak to the medic, Andy had been	Zimmerman testified when Andy hit	eyesight is admittedly impaired, he
breathing. At no time did Officer El-	the ground was dead and never moved	never wears his prescription contact
Farra hear or see Andy stop breathing,	again on his own. Zimmerman testified	lens. Zimmerman observed the
or notice any other physical difficulties.	when the police rolled Andy against an	incident from a distance of
	officers legs he could clearly see Andy	approximately 40-50 feet and could not
204. El-Farra Decl., ¶ 13-17	chest and stomach and he was clearly	tell what small, detailed movements
	not breathing. Karschamroon testified	were occurring. Zimmerman testified
	Gendreau opened up Andy's eyes and	that it was possible that Andy was
		breathing after being tased and that he
		just did not observe it, and that his

		belief that Andy was dead is not based
		on any actual evidence. Dr. Fukumoto
		testified that he has no way of knowing
		when Andy died and that he relies on
		the physician's death pronouncement as
		to the time of death.
		Zimmerman Depo., 22:3-7, 162:11-19,
		180:20-21; 201:6-12, 293:23-294:12;
		Fukumoto Depo., 187:19-188:5,
		258:7-259:25
205. After checking the house, the	205. Karschamroon could not tell if	205. Plaintiff's evidence does not
Officers Gendreau and Karschamroon	Andy was breathing. Zimmerman said	constitute a genuine issue of material
started toward the front door. They	he saw Gendreau slapping Andy's face	fact precluding summary judgment; it is
could then see the paramedics	and saying "to stop faking". Bua Phan	immaterial in light of the undisputed
performing CPR on Andy. This was a	also testified Andy died immediately	fact that GG Fire Department
"shock" and "surprise" to both officers.	after tasering.	Paramedics were promptly summoned.
205. Karschamroon Decl., ¶¶39;	Dr. Fukumoto testified the evidence	In any event, Zimmerman has had no
Gendreau Decl., ¶ 38	is consistent with Andy being dead	medical training, and although his
	immediately after he saw tasered.	eyesight is admittedly impaired, he
	Dr. Fukumoto also testified that if	never wears his prescription contact
	officers did see labored or heavy	lens. Zimmerman observed the

	breathing they should have known	incident from a distance of
	Andy was in cardiad distress and taken	approximately 40-50 feet and could not
	off the handcuffs at a minimum.	tell what small, detailed movements
	Supporting Evidence: Exhibit A,	were occurring. Zimmerman testified
	Deposition of Mark Zimmerman,	that it was possible that Andy was
	pp.108: 1-11/18-24, 110: 1-13/22-25,	breathing after being tased and that he
	111: 10- 17/18-22, 112: 25, 121: 6-	just did not observe it, and that his
	11/15-24, 123: 15-25, 240: 21-25, 242:	belief that Andy was dead is not based
	13-25, 243: 11-16, 244: 12-15, 246: 7-	on any actual evidence. Dr. Fukumoto
	19; Exhibit B, Deposition of Daniel	testified that he has no way of knowing
	Karschamroon, pp. 397: 7-8; Exhibit D,	when Andy died and that he relies on
	Deposition of Richard Fukumoto,	the physician's death pronouncement as
	M.D., pp. 90: 13-16, 258: 16-19, 259:	to the time of death.
	2-23, 260: 1-10, 261: 13-15, 264: 21-	Zimmerman Depo., 22:3-7, 162:11-19,
	24, 266: 13-22, 268:6-22, 280: 19-25,	180:20-21; 201:6-12, 293:23-294:12;
	281: 10-25, 282: 7-15, 283: 4-16/21-	Fukumoto Depo., 187:19-188:5,
	23; Exhibit E, Deposition of Bua Thi	258:7-259:25
	Phan, pp. 243.1: 16-18; 256.1: 2-5.	
206. Although the paramedics	206. Disputed: Zimmerman testified	206. Plaintiff's evidence does not
rendered emergency care and	all police officers arrived outside until	constitute a genuine issue of material
transported to the hospital, Andy Tran	the paramedics arrived looking	fact precluding summary judgment; it is

did not survive. Toxicology results revealed substantial levels of Diphenhydramine and Trihexylphenidyl in his system at the time of death.

206. Exhibit 6, Toxicology Report

increasingly more concerned because Andy was not moving. Zimmerman testified Andy fell hard to the ground after the tasering like a "sack of potatoes" and saw nothing consistent with Andy being gently placed on the ground. Zimmeman testified Andy was a fat guy and the officers could not have placed him gently down if they wanted. Zimmerman testified when Andy hit the ground was dead and never moved again on his own. Zimmerman testified when the police rolled Andy against an officer's legs he could clearly see Andy chest and stomach and he was clearly not breathing. Karschamroon testifed Gendreau opened up Andy's eyes and Karschamroon could not tell if Andy was breathing. Zimmerman said he saw Gendreau slapping Andy's face and

immaterial in light of Andy's actual resistance while being detained, the totality of the circumstances confronting the officers during that detention, and in light of the undisputed fact that GG Fire Department Paramedics were promptly summoned. In any event, the Plaintiffs' do not dispute the Defendants' UMF, but Dr. Fukumoto opinion that the tasering was a factor in Andy's death was because he already had a bad heart and liver. Dr. Fukumoto testified that he has no way of knowing when Andy died and that he relies on the physician's death pronouncement as to the time of death. Fukumoto Depo., 187:19-188:5, 206:23 - 207:11, 258:7-259:25

saying "to stop faking". Bua Phan also testified Andy died immediately after the tasering. Dr. Fukumoto testified the evidence is consistent with Andy being dead ' immediately after he saw tasered. Dr. Fukumoto also testified that if officers did see labored or heavy breathing they should have known Andy was in cardiad distress and taken off the handcuffs at a minimum. **Supporting Evidence:** Exhibit A, Deposition of Mark Zimmerman, pp. 108: 1-11118-24, 110: 1-13/22-25, 111:10-17/18-22,112: 25,121: 6-11/15-24,123: 15-25,240: 21-25,242: 13-25, 243: 11-16,244: 12-15,246: 7-19; Exhibit B, Deposition of Daniel Karschamroon, pp. 397: 7-8; Exhibit 0, Deposition of Richard Fukumoto, M.D., pp. 90: 13-16,258: 16-19,259: 2-

	23, 260: 1-10,261: 13-15,264: 21-	
	24,266:13-22,268:6-22,280: 19-25,281:	
	10-25,282: 7-15,283: 4-16/21-23;	
	Exhibit E, Deposition of Bua Thi Phan,	
	pp. 243.1: 16-18; 256.1: 2-5.	
207. The Coroner listed the cause of	207. Disputed: Dr. Fukumoto testified	207. Plaintiff's evidence does not
death as "Cardiac arrhythmia during	no drug played any role in Andy's	constitute a genuine issue of material
struggle with law enforcement due to	death and none where at fatal levels.	fact precluding summary judgment; it is
dilated hyertropic cardiomyopathy with	He testified Andy died from being	immaterial in light of Andy's actual
diphenhydramine and trihexylphenidl	tasered and the evidence was consistent	resistance while being detained, the
intoxication."	with Andy dying immediatly after	totality of the circumstances
207. Exhibit 7, Autopsy Report	being hit with the taser. Andy was in	confronting the officers during that
	full cardiac arrest when the paramedics	detention, and in light of the undisputed
	arrived and his eyes were fixed and	fact that GG Fire Department
	dilated. Dr. Fukumoto has been	Paramedics were promptly summoned.
	qualified as an expert in interpreting	In any event, the Plaintiffs' do not
	toxicology results in Courts.	dispute the Defendants' UMF, but Dr.
	Supporting Evidence: Exhibit D,	Fukumoto opinion that the tasering was
	Deposition of Richard Fukumoto,	a factor in Andy's death was because he
	M.D., pp. 63: 1-8, 66: 18-22, 67: 4-5,	already had a bad heart and liver. Dr.
	90: 13-16, 141: 5-25, 142: 6-7, 143: 2-	Fukumoto testified that he has no way

3, 228: 13-25, 229: 20-25, 239: 10-

14/19-25, 240: 1-25,243: 1-25, 245:

17-25, 260: 1-10, 283: 4-16/21-23,

296: 1-7, 304: 1-3/16-18, 305: 8-25,

306: 1-2/10-14, 307: 1-8/22-25, 308: 5-

7, 309: 1-5/18-22, 347: 1-4, 355: 2-9.

of knowing when Andy died and that he relies on the physician's death pronouncement as to the time of death. Fukumoto Depo., 187:19-188:5, 206:23 - 207:11, 258:7-259:25

ADJUDICATION NUMBER 8

PLAINTIFFS' FIFTH CAUSE OF ACTION FOR ASSAULT AND BATTERY FAILS AS A MATTER OF LAW

208. On September 3, 2008, at approximately 11:29 a.m., GGPD officers Richard Gendreau and Daniel Karschamroon were dispatched to a report of a "violent, mentally ill male" trying to break into the residence, that someone had been assaulted, and that there was an unknown "weapon" involved.

208. Karschamroon Decl., ¶¶ 1-5; Gendreau Decl., ¶¶ 1-5; Exhibit 2, Transcript/Audio 911 Recording; 208. **Disputed:** Neither the 911 Transcript nor the Dispatch CAD state anything about a "violent, mentally ill male" trying to break into residence nor assaulting anyone. They both say this was a 5150 call and Andy needs to' be taken to a hospital. The 911 caller never said Andy had weapons, the dispatcher made a mistake.

Supporting Evidence: Defense Exhibit 2, Transcript/Audio 911; Defense Exhibit 3, Dispatch CD. As

208. Neither the 911 audio nor the CAD dispatch refer to "5150" as claimed by Plaintiffs, but do refer to [Andy Tran] as being crazy, with weapons, and having committed an assault. Although requests were made to take [Andy] to the hospital, that does not constitute a genuine issue of material fact precluding summary judgment; officer actions are judged as to all information known or relied upon.

Exhibit 3, Dispatch CAD.	will be shown throughout Gendreau's	Karschamroon Decl., $\P\P$ 1-5;
	and Karshamroon's Declaration are	Gendreau Decl., $\P\P$ 1-5; Exhibit 2,
	inconsitent with both their Internal	Transcript/Audio 911 Recording;
	Affairs interviews and Deposition	Exhibit 3, Dispatch CAD.
	Testimony.	
	Supporting Evidence: Exhibit C,	
	Deposition of Gendreau, pp. 305: 5-25;	
	Exhibit I, Gendreau GGPD Internal	
	Affairs Interview, pp. 17-18.	
209. Police Dispatch as well as the	209. Disputed: Dispatch apparently	209. Plaintiffs do not dispute
CAD printout noted the male subject	did not understand 911 call because the	Defendants' UMF, but rather argue that
(Andy Tran) was a "mental case" and	911 caller said nothing about weapons.	police dispatch erroneously concluded
"crazy," that he had weapons, and that a	Dispatch does indicate major	that Andy had weapons. This does not
crying child could be heard in the	languange barrier between 911 caller	constitute a genuine issue of material
background. The reporting party	and dispacth. The CAD printout clearly	fact precluding summary judgment;
indicated that he was dizzy and he	shows this was a 5150 call and	officer actions are judged as to all
would not answer questions about Andy	Gendreau testified he was given further	information known or relied upon, and
Tran's location, and kept repeating	information of Andy's prior mental	it remains undisputed that Dispatch
"send someone right now, send	health history. The CAD clearly states	relayed information that Andy was
someone right now. Take to hospital."	Andy needs to be taken to the hospital.	crazy, with weapons, and had
209. Karschamroon Decl., ¶ 6	Supporting Evidence: Exhibit C,	committed an assault. Further, the

Gendreau Decl., ¶ 6; Exhibit 2,	Deposition of Gendreau, pp. 305: 5-25;	Plaintiffs citation to Officer Gendreau's
Transcript/Audio 911 recording;	Exhibit I, Gendreau GGPD Internal	deposition testimony does not support
Exhibit 3, Dispatch CAD.	Affairs Interview, pp. 17-18.	their assertion that he was aware of
		Andy's mental health history before
		arriving on scene, but rather only that
		he did not recall telling Internal Affairs
		that he acquired such knowledge. In
		any event, such knowledge would be
		immaterial in light of Andy's actual
		resistance while being detained, and the
		totality of the circumstances
		confronting the officers during that
		detention.
		Transcript/Audio 911 Recording;
		Exhibit 3, Dispatch CAD; Gendreau
		Depo., 305:5-25
210. Officers Karschamroon and	210. Disputed: Mark Zimmerman	210. The Plaintiff's citation to Mark
Gendreau arrived at approximately	testified he never saw Andy place any	Zimmerman's deposition does not
11:36 a.m., with Karschamroon first to	portion of his body in the window; in	support their assertion. Zimmerman
arrive. He noticed a male individual	fact he testified he began yelling as	testified that Andy stopped "directing
who appeared to be trying to break into	Andy taking off screen and Andy then	his attention towards opening the

or enter the residence through a	turned towards him at the same time	window and getting in the house" after
window, and broken screen nearby. As	Karschamroon arrived.	Officer Karschamroon ordered Andy to
Officer Karschamroon approached him,	Supporting Evidence: Exhibit A,	stop. In any event, this does not
his body halfway into the window and	Deposition of Mark Zimmerman, pp.	constitute a genuine issue of material
he appeared to be trying to grab	51: 9-22, 52: 1-24.	fact precluding summary judgment; it is
something from inside.		immaterial in light of Andy's actual
210. Karschamroon Decl., ¶ 7; Exhibit		resistance while being detained, and the
3, Dispatch CAD.		totality of the circumstances
		confronting the officers during that
		detention.
		Zimmerman Depo., 50:1-19, 52:7-16
211. Officer Karschamroon was aware	211. Disputed: Officer Karschamroon	211. The Plaintiffs do not dispute
through Dispatch the subject's name	testified he called Andy by his name	Officer Karschamroon called Andy by
was Andy Tran, so he called out	Andy and he was uncertain if he	name, only the source of that
"Andy" three to four times to get his	learned Andy's name from hearing Mr.	information. Further, the cited
attention. Andy stopped, slowly turned	Zimmerman saying it or hearing	deposition testimony does not indicate
around, and faced Officer	Andy's name from dispatch.	how many times Officer Karschamroon
Karschamroon. Andy was instructed to	Karschamroon testified Andy	called Andy's name. The remainder of
come down from the porch, which he	responded immediately and never	Defendants' UMF remains
eventually did, approaching Officer	testified he yelled 3-4 times.	unchallenged. In any event, the
Karschamroon with his hands at his	Supporting Evidence: Exhibit B,	Plaintiffs' evidence does not constitute

sides.	Deposition of Daniel Karschamroon,	a genuine issue of material fact
211. Karschamroon Decl., $\P\P$ 8-10.	pp. 245:15-25,246: 1-4.	precluding summary judgment; it is
		immaterial in light of Andy's actual
		resistance while being detained, and the
		totality of the circumstances
		confronting the officers during that
		detention.
		Karschamroon Depo., 245:15-25,
		246:1-4
212. Officer Karschamroon could	212. Disputed: Karschamroon	212. Plaintiffs' evidence does not
Andy had a blank stare and appeared to	testified Andy had a confused, puzzled	constitute a genuine issue of material
be confused or unsure of what was	look on his face and appeared in need	fact precluding summary judgment; it is
going on. Andy stopped his approach	of medical help.	immaterial in light of Andy's actual
when he was approximately 20 feet	Karschamroon testified he told Andy to	resistance while being detained, and the
from the officer, who then asked Andy	stop when he was 10-15 feet away and	totality of the circumstances
to come closer. As Andy slowly	put his hands on his head and he	confronting the officers during that
approached to within 10 feet of Officer	complied. He never testified Andy ever	detention. In any event, the deposition
Karschamroon's location, he was	stopped before being told to do so and	testimony of Officer Karschamroon
instructed to stop. Andy stopped, but	was told to come closer.	cited by Plaintiffs is consistent with
maintained his blank expression.	Supporting Evidence: Exhibit B,	Defendants' UMF, namely, that Andy
212. Karschamroon Decl., ¶¶ 11, 12	Deposition of Daniel Karschamroon,	was instructed to stop either "10 feet"

	pp. 244: 15-25, 259: 1-7, 257: 15-22,	or "10-15 feet" from Officer
	276: 19-25, 279: 14-16; Exhibit J,	Karschamroon's location. The cited
	Karschamroon GGPD Internal Affairs	deposition testimony does not include a
	Interview, pp. 5-6.	question whether Andy stopped at any
		time prior to being so instructed, and
		would be an immaterial variance
		regardless.
213. Andy was instructed to put his	213. Undisputed	213. Undisputed.
hands on top of his head and turn		
around, and he slowly complied with		
the directive. Officer Karschamroon		
then approached Andy and told him to		
interlock his fingers, which he did.		
Andy never spoke, but did appear to		
understand what was being said.		
213. Karschamroon Decl., $\P\P$ 13, 14		
214. Grabbing Andy's hands, Officer	214. Disputed: Neither the 911	214. 214. Plaintiffs' evidence does
Karschamroon sought to reassure him	Transcript nor the Dispatch CAD state	not dispute that Officer Karschamroon
by saying "there's nothing wrong,"	anything about a "violent, mentally ill	attempted to calm and relax Andy, nor
"we're just here to help you," and to	male" trying to break into residence nor	the nature of the call received by
"calm down" and "relax." However, it	assaulting anyone. They both say this	Dispatch. Neither the 911 audio nor the

was important to get Andy secured and	was a 5150 call and Andy needs to be	CAD dispatch refer to "5150" as
	, and the second	•
handcuffed as the call indicated he was	taken to a hospital. The 911 caller	claimed by Plaintiffs, but do refer to
a violent mental individual with a	never said Andy had weapons, the	[Andy Tran] as being crazy, with
weapon.	dispatcher made a mistake. Given most	weapons, and having committed an
214. Karschamroon Decl., $\P\P$ 14	of Karschamroon's Declaration is	assault. Although requests were made
	vastly different than his Internal Affairs	to take [Andy] to the hospital, that does
	Interview and Deposition Testimony	not constitute a genuine issue of
	anything he says he did is subject to	material fact precluding summary
	impeachment now for prior inconsitent	judgment; officer actions are judged as
	statements, thereby everything in his	to all information known or relied
	Declaration should be viewed with	upon.
	Suspicion.	Karschamroon Decl., ¶¶ 1-5;
	Supporting Evidence: Defense	11 11
	Exhibit 2, Transcript/Audio 911;	Gendreau Decl., $\P\P$ 1-5; Exhibit 2,
	_	Transcript/Audio 911 Recording;
	Defense Exhibit 3, Dispatch CAD.	Exhibit 3, Dispatch CAD.
215. As the first handcuff went on	215. Disputed: Officer Karschamroon	215. Plaintiffs argue semantics but do
Andy's right wrist, his hands	never told Internal Affairs Andy's	not dispute any material fact. Officer
immediately tensed up into fists.	hands ever balled into fists and he	Karschamroon testified at his
Officer Richard Gendreau arrived	testified repeatedly that Andy's hands	deposition that when a handcuff was
Officer Karschamroon was trying to	always remained interlocked after he	placed on Andy's right wrist, Andy

separate Andy's now-clenched fists.	was told to do so and he never saw	"tensed" and Officer Karschamroon
215. Karschamroon Decl., ¶ 15	Andy's hands ball into fists.	"could feel his fingers closing, kind of
	Karschamroon further testified he did	curling up from that interlocked
	not know whether Andy's tension was a	position" and "close up as if the fingers
	result of his attempt to follow the last	were curling." Officer Karschamroon
	command given to interlock his fingers.	also stated in his deposition that Andy
	He also testified Andy was never	was "actively resisting" and that he
	aggressive.	"thought it might turn violent."
	Supporting Evidence: Exhibit J,	Karschamroon Depo., 321:22-322:22,
	Karschamroon GGPD Internal Affairs	362:12-17, 366:14-19
	Interview, pp. 7-8; Exhibit B,	
	Deposition of Daniel Karschamroon,	
	pp. 261: 12-18, 264: 17-20, 265: 13-18,	
	268: 9-10, 270: 10-11, 281: 9-25, 284:	
	1-25, 285: 1-6.	
216. Officer Gendreau noticed the	216. Disputed: Officer Gendreau said	216. Plaintiffs do not dispute any
struggle to get Andy's arms behind his	he walked fast and did not run. Officer	material fact, argue semantics, and
back, so he immediately ran over to	Karschamroon testified he never	mischaracterize testimony. Mark
assist. Officer Gendreau was told that	struggled with Andy is Gendreau's	Zimmerman confirmed that Officer
one handcuff was secured, but that	presence nor tried to force Andy's	Gendreau approached at "a pretty fast
Andy was not allowing himself to be	hands behind his back. Karschamroon	pace." Officer Gendreau testified that

cuffed. Officer Karschamroon had a concern that the encounter might turn violent due to Andy's reaction when the first handcuff was placed on his wrist.

216. Karschamroon Decl., ¶¶ 16, 17;

Gendreau Decl., ¶¶ 7, 8

never said Andy would not allow self to be handcuff and said he told Gendreau Andy was complying but hands tensed when placed first handcuff on. Also Karschamroon and Zimmerman disagree with most of what Gendreau said occured and both Gendreau and Karschamroon have now filed Declarations which are filed with inconsistent statements from their Internal Affairs Interviews and Deposition Testimony their Declarations should be viewed with suspicion.

Supporting Evidence: Exhibit C,
Deposition of Richard Gendreau, pp.
175: 1-25, 176: 1-25, 177: 1-5, 206:
19-25; Exhibit B, Deposition of Daniel
Karschamroon, pp. 285: 11-13;
Karschamroon GGPD Internal Affairs
Interview, pp. 9.

Officer Karschamroon told him that Andy was tensed up and that he couldn't get Andy's hands behind his back into a handcuffing position. This is consistent with Officer Karschamroon's testimony that he told Gendreau that Andy was complying and tensed up after one handcuff was secured. Nothing in the cited testimony disputes that Andy continued to resist after Gendreau arrived. Further, Mark Zimmerman testified that Officer Gendreau did assist Officer Karschamroon by putting "his hands on Andy's hands or on the other officer's hands or in that vicinity" for "about 20 seconds" in what appeared to him as an effort to "keep more control" of Andy. Zimmerman Depo., 92:19-25, 93:16-19, 209:7-22; Gendreau Depo., 175:20-24; Karschamroon Depo.,

217. Andy continued to resist, failed to obey commands, and did not speak. Officer Gendreau could see that Andy's method of resistance was "complete rigidity"; both of his arms were up, his fists were balled, and he was shaking. Despite Officer Karschamroon's best efforts to pull Andy's arms down behind his back, his arms would not move.

217. Karschamroon Decl., \P 16 Gendreau Decl., \P 9

217. **Disputed:** Officer Karschamroon had full control of Andy and there was never a struggle between the two. Officer Karschamroon testified he never struggled with Andy is Gendreau's presence nor tried to force Andy's hands behind his back. Karschamroon never said Andy would not allow self to be handcuff and said he told Gendreau Andy was complying but hands tensed when placed first handcuff on. Also given Karschamroon and Zimmennan disagree with most of what Gendreau said occured and both Gendreau and Karschamroon have now filed Declarations which are filed with inconsistent statements from their Internal Affairs Interviews and Deposition Testimony their Declarations should be viewed with

285:11-14.

217. Plaintiffs' evidence does not dispute any material fact, and does not indicate that Officer Karschamroon had full control of Andy or that there was no resistance. Plaintiffs ignore Officer Karschamroon testimony that when a handcuff was placed on Andy's right wrist, Andy "tensed" and Officer Karschamroon "could feel his fingers closing, kind of curling up from that interlocked position" and "close up as if the fingers were curling." Officer Karschamroon also stated in his deposition that Andy was "actively resisting" by not allowing his arms to be pulled apart and providing tension to pull his arms together, and that he "thought it might turn violent." Nothing in Plaintiffs' cited testimony disputes that Andy continued to resist

	suspicion.	after Gendreau arrived. Further, Mark
	Supporting Evidence: Exhibit C,	Zimmerman testified that Officer
	Deposition of Richard Gendreau, pp.	Gendreau did assist Officer
	175: 1-25, 176: 1-25, 177: 1-5,206: 19-	Karschamroon by putting "his hands on
	25; Exhibit B, Deposition of Daniel	Andy's hands or on the other officer's
	Karschamroon, pp. 285: 11-13;	hands or in that vicinity" for "about 20
	Karschamroon GGPD Internal Affairs	seconds" in what appeared to him as an
	Interview, pp. 9.	effort to "keep more control" of Andy.
		Karschamroon Depo., 321:22-322:22,
		280:12-23, 362:12-17, 366:14-19,
		Zimmerman Depo., 92:19-25, 93:16-
		19, 209:7-22
218. To prevent a possible escape,	218. Disputed: Officer Karschamroon	218. Plaintiffs do not dispute any
Officer Gendreau moved in front of	testified he was a foot from Andy and	material fact precluding summary
Andy. From that position, he could see	1-3 feet from Gendreau and He never	judgment. The assertion that Andy did
that Andy was shaking and he began to	heard Andy growl or see his foaming at	not try to escape does dispute Officer
growl. Andy was not blinking, his	the mouth, or see Andy shaking other	Gendreau's motivation for positioning
pupils appeared to be dilated, and he	than when Karschamroon shook Andy	himself in front of Andy. Further,
had saliva coming from the corner of	hands, which moved, to let Andy know	Officer Karschamroon was positioned
his mouth, almost as though he was	he was still behind him. Gendreau	behind Andy, and was not in a position
foaming at the mouth. Officer	testified he never feared Andy would	to see Andy's face at the time he was

Gendreau felt like Andy was looking	flee or run. Karschamroon testified	tased. As to the issue of Andy
straight through him.	Andy never made a movement	growling, Mark Zimmerman testified
218. Karschamroon Decl., ¶ 16	consisting with fleeing or running away	that although he never saw Andy's lips
Gendreau Decl., ¶¶ 10, 11	Supporting Evidence: Exhibit B,	moving, he heard some audible things
	Deposition of Daniel Karschamroon,	coming out of his mouth. Zimmerman
	pp. 261: 12-18, 264: 17-20, 284: 1-25,	also testified that he could see subtle
	285: 1-6, 330: 11-15; Declaration of	movement going on between the
	Daniel Karschamroon, pp. 384: 18,	officers and Andy and that there could
	385: 1-5; Exhibit C, Deposition of	have been a "whole 'nother [sic] set of
	Richard Gendreau, pp. 174: 14-17;	scenarios going on" that he did not see.
	176: 1-25, 177: 1-10,182: 2-23,187: 1-	Karschamroon Depo., 348:9-15,
	8,220: 1-24, 225: 17-24, 266: 1-10.	355:16-19, Zimmerman Depo., 217:3-
		9, 222:11-223:13, 276:22-25
219. In a casual manner, Officer	219. Disputed: Officer Karschamroon	219. Plaintiffs do not dispute
Gendreau said words to the effect of,	testified the only thing he heard	Defendants' UMF that the officers
"Hey, dude, just calm down," and	Gendreau say was "Hey, dude, calm	attempted to relax and calm Andy while
advised Andy to relax, put his hands	down." Gendreau never ackowledged	attempting to secure him, but rather
behind his back, and that "we're not	he said "dude calm down".	dispute the exact words spoken. This
here to hurt you." Officer	Karschamrron testified Gendreau never	does not create a genuine issue of
Karschamroon was reminding Andy to	told Andy to put his hands behind his	material fact precluding summary
relax as well, but he was also shaking	back and the only shaking he saw from	judgment. Further, it is immaterial that

Andy's still clenched hands to let him	Andy was Karschamroon shaking	Officer Karschamroon may not have
know he still needed to be handcuffed.	Andy to let him know he was there.	said anything to Andy about being
219. Karschamroon Decl., $\P\P$ 19, 20;	Karschamroon testifed he never said	handcuffed since the act of attempting
Gendreau Decl., ¶¶ 12, 13	anything to Andy about being	to handcuff him established the
	handcuffed.	officer's intention. Officer
	Supporting Evidence: Exhibit B,	Karschamroon's deposition testimony
	Deposition of Daniel Karschamroon,	that Andy was not allowing his arms to
	pp. 282, 345: 1-18, 268: 19-23, 269: 1-	be pulled apart and was providing
	4; 419, Exhibit B, Deposition of Daniel	tension to pull his arms together
	Karschamroon, pp. 328: 1-7,330: 11-	demonstrates resistance to that
	15/17-25, 337: 10-16, 340: 8-9, 341: 7-	intention.
	16.	Karschamroon Depo., 321:22-322:22,
		280:12-23, 362:12-17, 366:14-19
220. Andy continued to ignore the	220. Disputed: Gendreau said he did	220. Plaintiffs do not dispute any
officers' orders, and concern grew that	not believe Andy understood anything	material fact precluding summary
the dangling handcuff could be used as	he said so how can he claim Andy	judgment and mischaracterize
a weapon if Andy decided to swing his	ignored an order? Further,	testimony. Officer Karschamroon did
arm. Both officers then attempted to	Karschamroon testified that neither	not testify that "relax" and "calm
pry Andy's arms down but could not	"relax" or "dude calm down" were	down" were not lawful orders.
overcome his flexed/locked position. A	lawful orders. Both Karshamroon and	Although he did testify he had not
pain compliance technique performed	Zimmennan said Gendreau never	received training that such commands

by Officer Gendreau did nothing.

220. Karschamroon Decl., ¶¶ 21, 22;

Gendreau Decl., ¶¶ 12, 14-16

struggled with Andy except to taser him. Karschamroon testified repeatedly he never saw Gendreau touch Andy and did not struggle either alone or with Gendreau to get Andy's ann behind his back.

Karschamroon testified he always had ahold of the loose handcuff so it could not be dangling and used as a weapon. Again, given the many new statements which are completely inconsitent with statements made to Internal Affairs and during Deposition testimony puts the credibilty of Karschamroon and Gendreau is great doubt and their Declarations should be viewed with extreme caution.

Supporting Evidence: Exhibit B, Deposition of Daniel Karschamroon, pp. 273: 8-11, 274, 292: 17-23, 293: 1, 331: 16-25, 332: 18-21, 333: 7-11;

were lawful orders, he stated that the commands given were appropriate given the goal of relaxing Andy. Officer Karschamroon also stated in his deposition that Andy was "actively resisting" by not allowing his arms to be pulled apart and providing tension to pull his arms together, and that he "thought it might turn violent." Nothing in Plaintiffs' cited testimony disputes that Andy continued to resist after Gendreau arrived. Further, Mark Zimmerman testified that Officer Gendreau did assist Officer Karschamroon by putting "his hands on Andy's hands or on the other officer's hands or in that vicinity" for "about 20 seconds" in what appeared to him as an effort to "keep more control" of Andy. Nothing in Zimmerman's testimony disputes the officers' account of Andy's Karschamroon GGPD Internal Affairs Interview, pp. 7-8.; Exhibit A,
Deposition of Mark Zimmerman, pp. 79:11-20,80: 10-16, 81: 4-5, 83: 18-25,85:1-10,87: 3-7/16-23,97: 5-6, 100: 1-25, 102: 4-9/20-24,150: 20-25, 151: 9-11, 197:20-25,198: 1-5,209:23-25,222:17-25,224: 6-12, 276: 10-20,277: 1-4, 278: 18-21.

resistance other than his own speculation. Zimmerman testified that he could see subtle movement going on between the officers and Andy and that there could have been a "whole 'nother [sic] set of scenarios going on" that he did not see. He could not hear what was being said, and although his eyesight is admittedly impaired, he never wears his prescription contact lens. Zimmerman observed the incident from a distance of approximately 40-50 feet could not tell what small, detailed movements were occurring. He does not know whether the officers tried to move Andy's hands from the top of his head, and admits that many things could have been said or done which he could not observe or hear. While Zimmerman testified that Andy's hands were on his head at all

		times, he cannot say whether there was
		any kind of struggle
		Karschamroon Depo., 321:22-322:22,
		280:12-23, 283:20-284:20, 362:12-17,
		366:14-19, Zimmerman Depo., 22:3-7,
		82:11-18, 92:19-25, 93:16-19, 96:2-10,
		100:7-20, 162:11-19, 187:3-11,
		200:11-24, 201:6-12, 209:7-22, 217:3-
		9, 222:11-223:13, 276:22-25, 287:25-
		288:12.
221. Officer Gendreau thought that if a	221. Disputed: Karschamroon and	221. Plaintiffs' evidence does not
fight ensued, it was going to be a bad	Zimmerman both testified Gendreau	dispute any material fact. Plaintiffs
one given the strength that Andy had	never struggled to force Andy's hands	ignore Officer Karschamroon's
exhibited when resisting both officers	behind back. Karschamroon said	testimony that when a handcuff was
attempt to lower his arms. Officer	Gendreau never touched Andy.	placed on Andy's right wrist, Andy
Karschamroon was similar	Karschamroon testified when he shook	"tensed" and Officer Karschamroon
221. Karschamroon Decl., ¶ 21;	Andy's hands they moved so the	"could feel his fingers closing, kind of
Gendreau Decl., ¶ 19	extraordinary strength Gendreau said	curling up from that interlocked
	Andy had is disputed by	position" and "close up as if the fingers
	Karschamroon.	were curling." Officer Karschamroon
	Supporting Evidence: Exhibit B,	also stated in his deposition that Andy

Deposition of Daniel Karschamroon, pp.273: 8-11,274, 292: 17-23, 293: 1, 331: 16-25, 332: 18-21, 333: 7-11; Karschamroon GGPD Internal Affairs Interview, pp. 7-8.; Exhibit A, Deposition of Mark Zimmerman, pp.79: 11-20, 80: 10-16, 81:4-5, 83: 18-25, 85: 1-10, 87: 3-7/16-23, 97: 5-6, 100: 1-25, 102: 4-9/20-24, 150: 20-25, 151: 9-11, 197:20-25, 198: 1-5, 209: 23-25, 222: 17-25, 224: 6-12, 276: 10-20, 277: 1-4, 278: 18-21.

was "actively resisting" by not allowing his arms to be pulled apart and providing tension to pull his arms together, and that he "thought it might turn violent." Nothing in Plaintiffs' cited testimony disputes that Andy continued to resist after Gendreau arrived. Further, Mark Zimmerman testified that Officer Gendreau did assist Officer Karschamroon by putting "his hands on Andy's hands or on the other officer's hands or in that vicinity" for "about 20 seconds" in what appeared to him as an effort to "keep more control" of Andy. Nothing in Zimmerman's testimony disputes the officers' account of Andy's resistance other than his own speculation. Karschamroon Depo., 321:22-322:22, 280:12-23, 362:12-17, 366:14-19, Zimmerman Depo., 22:3-7, 82:11-18,

		92:19-25, 93:16-19, 96:2-10, 100:7-20,
		162:11-19, 187:3-11, 200:11-24,
		201:6-12, 209:7-22, 217:3-9, 222:11-
		223:13, 276:22-25, 287:25-288:12.
222. As Andy continued to resist	222. Disputed: Karschamroon	222. Plaintiffs do not dispute any
officer commands by remaining rigid	testified after he told Andy to interlock	material fact precluding summary
and non-responsive, Officer Gendreau	his fingers Andy was only told to	judgment and mischaracterize
decided to take out his Taser. Andy	relax or "dude calm down" which	testimony. Officer Karschamroon
was informed several times that if he	Karschamroon testified were not lawful	testified that Officer Gendreau did warn
did not comply, he would be tased.	orders. Gendreau testified he did pot	Andy that he would be tased if he did
Andy continued to resist, so Officer	believe Andy understood anything he	not calm down, and Zimmerman
Gendreau deployed his taser once in	said so it would be difficult for him to	testified that Officer Gendreau had his
Andy's thigh for a cycle of five	"resist" non lawful "commands".	hands on top of Andy's hands for about
seconds.	Karschamroon testified Gendreau told	20 seconds before stepping to the side
222. Karschamroon Decl., $\P\P$ 22-25;	him "Danny I'm just going to Tase	to taser him.
Gendreau Decl., ¶¶ 20-23	him" and Karschamroom testified	Karschamroon Depo., 331:6-12,
	Gendreau never told Andy he was	Zimmerman Depo., 208:8-209:17
	going to be tasered. Zimmerman said	
	Gendreau stepped to Andy's side and	
	immediatly tasered him.	
	Supporting Evidence: Exhibit A,	

	T	_
	Deposition of Mark Zimmerman, pp.	
	108: 1-11/18-24, 110: 1-13/22-25, 111:	
	10-17/18-22, 112: 25, 121: 6-11/15-24,	
	123: 15-25, 240: 21-25, 242: 13-25,	
	243: 11-16, 244: 12-15, 246: 7-19;	
	Exhibit B, Deposition of Daniel	
	Karschamroon, pp. 397: 7-8; Exhibit D,	
	Deposition of Richard Fukumoto,	
	M.D., pp. 90: 13-16, 258: 16-19, 259:	
	2-23, 260: 1-10, 261: 13-15, 264: 21-	
	24, 266: 13-22, 268:6-22, 280: 19-25,	
	281: 10-25, 282: 7-15, 283: 4-16/21-	
	23; Exhibit E, Deposition of Bua Thi	
	Phan, pp. 243.1: 16-18; 256.1: 2-5.	
223. Prior to deploying the taser,	223. Disputed: GGPD General Order	223. Plaintiffs do not dispute any
Officer Gendreau also attempted to	5.31 states the IVS Unit must be	material fact precluding summary
activate his audio recording system and	activated when a detention was going	judgment. The General Orders are
the one in his police unit, although he	to occur. Gendreau testified he saw	simply "guidelines," and the purpose of
was too far away for remote avtivation.	Karschamroon detaining Andy when he	the In-Car Video System (IVS) is to
Based on the nature of the call and	arrived yet failed to activate his IVS	provide an accurate, unbiased
rapidly evolving events, activating a	Unit; Karschamroon testified he	audiovisual record of enforcement

recorder or his in-unit video during this incident was "not at the forefront" of Officer Karschamroon's thoughts.

223. Karschamroon Decl., ¶ 41; Gendreau Decl., ¶ 20 thought IVS Unit activation was completely within his discretion. No where in the GGPD General Orders does it indicate "rapidly evolving events" warrant ignoring orders. The fact Gendreau claims to have attempted to activate his IVS Unit shows he had time and should have called for a supervisor and medics before tasering Andy as required by GGPD General Order 2.25. Further, given the major credibility issues of all involved officers Plaintiffs do not believe the Court should not accept the IVS recordings were destroyed. GGPD General Order 5.31 states if IVS fails to activate a work order must be completed and Gendreau never did the required paperwwork.

Supporting Evidence: Exhibit C, Deposition of Richard Gendreau, pp. related and non-criminal incidents that will enhance criminal prosecutions and limit civil liabilities. The policy is nonpunitive in nature, and no disciplinary action for violations of this policy will be proposed unless the employee refuses either actively or passively, as demonstrated by repeated instances of his/her failure. Summoning Fire Department Paramedics before the use of a Taser is only recommended, if practical, under the circumstances. General Order 2.24, 5.31, General Order, "Statement by the Chief of Police"

	97-98, 109: 20-23; Exhibit H, GGPD	
	General Order 2.24, 5.31.	
224. Officer Gendreau was trained that	224. Disputed: Gendreau testified he	224. Plaintiff's evidence does not
one of the best ways to get a subject on	believed that Andy was under the	constitute a genuine issue of material
the ground is to tase them in the leg.	influence of a Central Nervous System	fact precluding summary judgment; it is
His goal was to take Andy into custody	stimulant before he tasered Andy and	immaterial in light of Andy's actual
without any further risk of injury to	knew and had been trained that tasering	resistance while being detained, and the
Andy, Officer Karschamroon or	Andy could cause his immediate death.	totality of the circumstances
himself.	Given theses facts it is difficult to	confronting the officers during that
224. Gendreau Decl., ¶ 22	believe Gendreau did not believe to	detention. Officer Karschamroon
	injure Andy. Further, GGPD General	testified that he did not feel it was
	Orders state a medic and supervisor	necessary to take out any weapon only
	should be called prior to tasering a	up to the point of placing the first
	subject. Gendreau testified he tried to	handcuff on Andy's wrist. Officer
	activate his IVS and Lux testified it	Gendreau testified that Andy's conduct
	would have take 1-3 seconds to call for	and appearance was indicative of
	a medic and supervisor. Gendreau said	someone who potentially is going to
	Andy was not resisting, being	throw a punch. Plaintiffs' misrepresent
	aggressive or looking like would flee	the testimony of Benedict Lux, which
	when he wass tasered so there was no	was based on incomplete hypothetical
	rush to taser Andy. Andy was therefore	questioning and not on facts relevant to

a non comabative subject per GGPD

General Order 2.6 and Lux testified he trained his students including Gendreau not taser such subjects.

Karschamroon testified he saw no reason to take out any weapons against Andy and had no idea why Gendreau was tasering Andy. Lux testified Karshamroon as the first officer on scene should have detennined why Gendreau was going to taser Andy.

Supporting Evidence: Exhibit B,

Deposition of Daniel Karschamroon,

pp. 251: 17-25, 252: 1-118, 355: 21-24,

357: 3-18, 360: 1-6; Exhibit C,

Deposition of Richard Gendreau, pp.

96: 1-16,174: 14-17; 176: 1-25, 177: 1-

10, 182: 2-23, 187: 1-8, 220: 1-24, 225:

17-24, 266: 1-10, 327: 17-22, 328: 1-

14/20-25, 329: 1-18; Exhibit F,

Deposition of Benedict Lux, pp. 176:

this case.

Karschamroon Depo., 251:21-252:6,

Gendreau Depo., 178:5-16.

	15-22,177:7-20,178:5-14,179: 5-12,	
	204: 1-25, 205: 1-15, 206: 9-22, 209:	
	1-25, 210: 8-18, 211: 9-11, 212: 13-18,	
	244: 14-25, 247: 21-25, 252: 21-25, pp.	
	253: 1-3/5-12, 254, 255: 1-5/12-15;	
	Exhibit H, GGPD General Order 2.24,	
	2.6; Exhibit J, Karschamroon GGPD	
	Internal Affairs Interview, pp. 15.	
225. Once Andy was tased, he began to	225. Disputed: Zimmerman testified	225. Plaintiff's evidence does not
fall backward toward Officer	Andy fell hard to the ground after the	constitute a genuine issue of material
Karschamroon, who caught him and	tasering like a "sack of potatoes" and	fact precluding summary judgment; it is
laid him forward onto the ground.	saw nothing consistent with Andy	immaterial in light of Andy's actual
Andy also released his grip, and once	being gently placed on the ground.	resistance while being detained, and the
the taser cycle stopped, the officers	Zimmeman testified Andy was a fat	totality of the circumstances
were able to bring his left arm behind	guy and the officers could not have	confronting the officers during that
his back and apply the other handcuff to	placed him gently down if they wanted.	detention. Zimmerman has had no
secure his arms.	Zimmerman testified when Andy hit	medical training. Although his eyesight
225. Karschamroon Decl., ¶ 26;	the ground was dead and never moved	is admittedly impaired, he never wears
Gendreau Decl., $\P\P$ 24, 25	again on his own.	his prescription contact lens.
	Supporting Evidence: Exhibit A,	Zimmerman observed the incident from
	Deposition of Mark Zimmerman, pp.	a distance of approximately 40-50 feet

	108: 1-11/18-24, 110: 1-13, 240: 21-	and could not tell what small, detailed
	25, 242: 13-25,243: 11-16.	movements were occurring.
	25, 212, 15-25,275, 11-10.	C
		Zimmerman testified that it was
		possible that Andy was breathing after
		being tased and that he just did not
		observe it, and that his belief that Andy
		was dead is not based on any actual
		evidence
		Zimmerman Depo., pp. 22:3-7, 162:11-
		19, 180:20-21; 201:6-12, 293:23-
		294:12
226. At approximately 11:38 a.m.,	226. Disputed: GG Fire Department	226. Plaintiff's evidence does not
Officer Gendreau advised over his	paramedics were not dispached until	constitute a genuine issue of material
police radio that the situation was	11:39:38. Per Lux and GGPD General	fact precluding summary judgment; it
stable, but that Andy had been tased and	Order 2.24 states medics should be	remains undisputed that GG Fire
he requested Garden Grove Fire	called before any tasering and a	Department paramedics were promptly
Department to respond to examine	supervisor must be called before a	dispatched after Andy was tased.
Andy per their protocol when a subject	tasering. Sergeant Wagner was not	General Orders are guidelines and not
is tased. At approximately 11:39 a.m.,	requested until 11:46.	an independent mechanism to pursue
Garden Grove Fire Department was	Supporting Evidence: Exhibit D,	civil liability.
dispatched to the incident scene in	Deposition of Richard Fukumoto,	

reference to Andy being tased.	M.D., pp. 90: 13-16, 282: 7-15, 283:4-	General Orders, "Statement by the
226. Karschamroon Decl., ¶ 27;	16/21-23; Exhibit F, Deposition of	Police Chief"
Gendreau Decl., ¶ 26; Exhibit 3	Benedict Lux, pp. 249: 15-25, 250: 9-	
Dispatch CAD	10, 260: 13-25, 262: 15-25, 263: 1-3;	
	Exhibit H, GGPD General Order 2.24;	
	Exhibit K., Sergeant Wagner's report.	
227. As he was handcuffed and on the	227. Disputed: Zimmerman testified	227. Plaintiff's evidence does not
ground, Andy looked in various	Andy fell hard to the ground after the	constitute a genuine issue of material
directions. Officer Gendreau continued	tasering like a "sack of potatoes" and	fact precluding summary judgment; it is
to instruct him to relax, and informed	saw nothing consistent with Andy	immaterial in light of the undisputed
him they were in the process of getting	being gently placed on the ground.	fact that GG Fire Department
him medical attention. When asked if	Zimmeman testified Andy was a fat	Paramedics were promptly summoned.
he was doing okay, Andy remained	guy and the officers could not have	In any event, Zimmerman has had no
unresponsive but continued to look	placed him gently down if they wanted.	medical training, and although his
around.	Zimmerman testified when Andy hit	eyesight is admittedly impaired, he
227. Karschamroon Decl., ¶ 30;	the ground was dead and never moved	never wears his prescription contact
Gendreau Decl., ¶ 27	again on his own. Karschamroon	lens. Zimmerman observed the
	testifed Gendreau opened up Andy's	incident from a distance of
	eyes and Karschamroon could not tell	approximately 40-50 feet and could not
	if Andy was breathing. Zimmerman	tell what small, detailed movements
	said he saw Gendreau slapping Andy's	were occurring. Zimmerman testified

face and saying "to stop faking". Bua Phan also testified Andy died immediately after the tasering. Dr. Fukumoto testified the evidence is consistent with Andy being dead immediately after he saw tasered. Supporting Evidence: Exhibit A, Deposition of Mark Zimmerman, pp. 108: 1-11/18-24, 110: 1-13/22-25, 111: 10-17/18-22, 112: 25, 121: 6-11/15-24,123: 15,- 25, 240: 21-25, 242: 13-25, 243: 11-16,244: 12-15,246: 7-19; Exhibit B, Deposition of Daniel Karschamroon, pp. 397: 7-8; Exhibit D, Deposition of Richard Fukumoto, M.D., pp. 90: 13-16, 258: 16-19, 259:2-23, 260: 1-10, 261: 13-15, 264: 21-24, 266: 13-22, 268:6-22, 280: 19-25, 281: 10-25, 282: 7-15, 283: 4-16/21-23; Exhibit E, Deposition of Bua Thi Phan, pp. 243.1: 16-18; 256.1: 2-5.

that it was possible that Andy was breathing after being tased and that he just did not observe it, and that his belief that Andy was dead is not based on any actual evidence. Dr. Fukumoto testified that he has no way of knowing when Andy died and that he relies on the physician's death pronouncement as to the time of death.

Zimmerman Depo., 22:3-7, 162:11-19, 180:20-21; 201:6-12, 293:23-294:12; Fukumoto Depo., 187:19-188:5, 258:7-259:25

228. After the tasing, a third officer arrived on scene, Officer Amir El-Farra. The officers decided to roll Andy over on his back to observe him from the front. His eyes were closed, but a check by Officer Gendreau found they were dilated. Because of that and Andy's labored breathing, the officers decided to sit him up against Officer El-Farra's leg, thinking it might help with his breathing and help snap him out of the trance he appeared to be in.

228. Karschamroon Decl., $\P\P$ 29-34; Gendreau Decl., $\P\P$ 31-32; El-Farra Decl., $\P\P$ 6-8

228. **Disputed:** Zimmerman testified Andy fell hard to the ground after the tasering like a "sack of potatoes" and saw, nothing consistent with Andy being gently placed on the ground. Zimmeman testified Andy was a fat guy and the officers could not have placed him gently down if they wanted. Zimmerman testified when Andy hit the ground was dead and never moved again on his own. Zimmerman testified when the police rolled Andy against an officers legs he could clearly see Andy chest and stomach and he was clearly not breathing. Karschamroon testifed Gendreau opened up Andy's eyes and Karschamroon could not tell if Andy was breathing. Zimmerman said he saw Gendreau slapping Andy's face and saying "to stop faking". Bua Phan also testified Andy died immediately after

228. Plaintiff's evidence does not constitute a genuine issue of material fact precluding summary judgment; it is immaterial in light of the undisputed fact that GG Fire Department Paramedics were promptly summoned. In any event, Zimmerman has had no medical training, and although his eyesight is admittedly impaired, he never wears his prescription contact lens. Zimmerman observed the incident from a distance of approximately 40-50 feet and could not tell what small, detailed movements were occurring. Zimmerman testified that it was possible that Andy was breathing after being tased and that he just did not observe it, and that his belief that Andy was dead is not based on any actual evidence. Dr. Fukumoto testified that he has no way of knowing

	the tasering.	when Andy died and that he relies on
	Dr. Fukumoto testified the evidence is	the physician's death pronouncement as
	consistent with Andy being dead	to the time of death.
	immediately after he saw tasered.	Zimmerman Depo., 22:3-7, 162:11-19,
	Supporting Evidence: Exhibit A,	180:20-21; 201:6-12, 293:23-294:12;
	Deposition of Mark Zimmennan, pp.	Fukumoto Depo., 187:19-188:5,
	108: 1-11/18-24, 110: 1-13/22-25, 111:	258:7-259:25
	10-17/18-22,112: 25, 121: 6-11/15-24,	
	123: 15-25; 240: 21-25; 242: 13-25,	
	243: 11-16, 244: 12-15, 246: 7-19;	
	Exhibit B, Deposition of Daniel	
	Karschamroon, pp. 397: 7-8; Exhibit D,	
	Deposition of Richard Fukumoto,	
	M.D., pp. 90: 13-16, 258: 16-19, 259:	
	2-23, 260: 1-10, 261: 13-15, 264: 21-	
	24,266: 13-22, 268:6-22, 280: 19-25,	
	281: 10-25, 282: 7-15, 283: 4-16/21-	
	23; Exhibit E, Deposition of Bua Thi	
	Phan, pp. 243.1: 16-18; 256.1: 2-5.	
229. Given Andy's dilated pupils in	229. Disputed: Gendreau testified he	229. Plaintiff's evidence does not
bright sunlight and his rapid pulse,	believed that Andy was under the	constitute a genuine issue of material

Officer Gendreau did consider that he may be under the influence of a controlled substance, but he never had the opportunity to do a full evaluation.

229. Gendreau Decl., ¶ 37

influence of a Central Nervous System stimulant before he tasered Andy and knew and had been trained that tasering Andy could cause his immediate death. Given theses facts it is difficult to believe Gendreau did not believe to injure Andy. Further, GGPD General Orders state a medic and supervisor should be called prior to tasering a subject. Gendreau testified he tried to activate his IVS and Lux testified it would have take 1-3 seconds to call for a medic and supervisor. Gendreau said Andy was not resisting, being aggressive or looking like would flee when he wass tasered so there was no rush to taser Andy. Andy was therefore a non comabative subject per GGPD General Order 2.6 and Lux testified he trained his students including Gendreau not taser such subjects.

fact precluding summary judgment; it is immaterial in light of Andy's actual resistance while being detained, and the totality of the circumstances confronting the officers during that detention. Officer Karschamroon testified that he did not feel it was necessary to take out any weapon only up to the point of placing the first handcuff on Andy's wrist. Officer Gendreau testified that Andy's conduct and appearance was indicative of someone who potentially is going to throw a punch. Plaintiffs' misrepresent the testimony of Benedict Lux, which was based on incomplete hypothetical questioning and not on facts relevant to this case.

Karschamroon Depo., 251:21-252:6, Gendreau Depo., 178:5-16.

Karschamroon testified he saw no reason to take out any weapons against Andy and had no idea why Gendreau was tasering Andy. Lux testified Karshamroon as the first officer on scene should have detennined why Gendreau was going to taser Andy. Supporting Evidence: Exhibit B, Deposition of Daniel Karschamroon, pp. 251: 17-25, 252: 1-118, 355: 21-24, 357: 3-18, 360: 1-6; Exhibit C, Deposition of Richard Gendreau, pp. 96: 1-16,174: 14-17; 176: 1-25, 177: 1-10, 182: 2-23, 187: 1-8, 220: 1-24, 225: 17-24, 266: 1-10, 327: 17-22, 328: 1-14/20-25, 329: 1-18; Exhibit F, Deposition of Benedict Lux, pp. 176: 15-22,177:7-20,178:5-14,179: 5-12, 204: 1-25, 205: 1-15, 206: 9-22, 209: 1-25, 210: 8-18, 211: 9-11, 212: 13-18, 244: 14-25, 247: 21-25, 252: 21-25, pp.

	253: 1-3/5-12, 254, 255: 1-5/12-15;	
	Exhibit H, GGPD General Order 2.24,	
	2.6; Exhibit J, Karschamroon GGPD	
	Internal Affairs Interview, pp. 15.	
230. As Andy was seated upright and	230. Disputed: Zimmerman testified	230. Plaintiff's evidence does not
leaning against Officer El-Farra's leg,	Andy fell hard to the ground after the	constitute a genuine issue of material
his breathing was observed to be	tasering like a "sack of potatoes" and	fact precluding summary judgment; it is
labored but no officer believed the	saw, nothing consistent with Andy	immaterial in light of the undisputed
situation to be critical. Officer	being gently placed on the ground.	fact that GG Fire Department
Karschamroon saw nothing to suggest a	Zimmeman testified Andy was a fat	Paramedics were promptly summoned.
life-threatening situation, Officer	guy and the officers could not have	In any event, Zimmerman has had no
Gendreau "felt comfortable" upon	placed him gently down if they wanted.	medical training, and although his
hearing the approach of the medics, and	Zimmerman testified when Andy hit	eyesight is admittedly impaired, he
Officer El-Farra could see Andy's chest	the ground was dead and never moved	never wears his prescription contact
rising and falling.	again on his own. Zimmerman testified	lens. Zimmerman observed the
230. Karschamroon Decl., ¶ 35;	when the police rolled Andy against an	incident from a distance of
Gendreau Decl., ¶¶ 33-34; El-Farra	officers legs he could clearly see Andy	approximately 40-50 feet and could not
Decl., ¶¶10	chest and stomach and he was clearly	tell what small, detailed movements
	not breathing. Karschamroon testifed	were occurring. Zimmerman testified
	Gendreau opened up Andy's eyes and	that it was possible that Andy was
	Karschamroon could not tell if Andy	breathing after being tased and that he

was breathing. Zimmerman said he saw Gendreau slapping Andy's face and saying "to stop faking". Bua Phan also testified Andy died immediately after the tasering.

Dr. Fukumoto testified the evidence is consistent with Andy being dead immediately after he saw tasered.

Dr. Fukumoto also testified that if officers did see labored or heavy breathing they should have known Andy was in cardiad distress and taken off the handcuffs at a minimum.

Supporting Evidence: Exhibit A,
Deposition of Mark Zimmerman,
pp.108: 1-11/18-24, 110: 1-13/22-25,
111: 10- 17/18-22, 112: 25, 121: 611/15-24, 123: 15-25, 240: 21-25, 242:
13-25, 243: 11-16, 244: 12-15, 246: 719; Exhibit B, Deposition of Daniel
Karschamroon, pp. 397: 7-8; Exhibit D,

just did not observe it, and that his belief that Andy was dead is not based on any actual evidence. Dr. Fukumoto testified that he has no way of knowing when Andy died and that he relies on the physician's death pronouncement as to the time of death.

Zimmerman Depo., 22:3-7, 162:11-19, 180:20-21; 201:6-12, 293:23-294:12; Fukumoto Depo., 187:19-188:5, 258:7-259:25

	Deposition of Richard Fukumoto,	
	M.D., pp. 90: 13-16, 258: 16-19, 259:	
	2-23, 260: 1-10, 261: 13-15, 264: 21-	
	24, 266: 13-22, 268:6-22, 280: 19-25,	
	281: 10-25, 282: 7-15, 283: 4-16/21-23;	
	Exhibit E, Deposition of Bua Thi Phan, pp.	
	243.1: 16-18; 256.1: 2-5.	
231. Officer Gendreau asked Officer	231. Zimmerman testified all police	231. Plaintiff's evidence does not
El-Farra to stay with Andy as he and	officers arrived outside until the	constitute a genuine issue of material
Officer Karschamroon ascertained the	paramedics arrived looking	fact precluding summary judgment; it is
welfare or condition of the calling party	increasingly more concerned because	immaterial in light of the undisputed
or family considering the nature of the	Andy was not moving. Per Exhibit 3	fact that GG Fire Department
call and the need to determine if anyone	of Defendants Motion El-Farra was on	Paramedics were promptly summoned.
had been injured or attacked by Andy.	scene at 11:38 and Paramedics did not	In any event, Zimmerman "thinks"
Officer El-Farra estimates that he was	arrive until 11:44 so El-Farra was on	Officers Karschamroon and Gendreau
in front of the residence, with Andy, for	scene for several minutes prior to the	remained with Andy until the
approximately 15 to 20 seconds	paramedics arrival.	paramedics arrived but concedes he lost
thereafter prior to medics arriving.	Supporting Evidence: Exhibit A,	track of them.
231. Karschamroon Decl., $\P\P$ 35-36;	Deposition of Mark Zimmerman, pp.	Zimmerman Depo., 264:18-23, 267:12-
Gendreau Decl., ¶ 33-34; El-Farra	123: 15-25,246: 7-19, 251: 4, 264: 18-	14, 307:21-25
Decl., ¶ 11-12	25,265: 5-14118-25,267: 6-8.; Defense	

	Exhibit 3, Dispatch CAD.	
232. Officers Gendreau and	232. Disputed: Zimmerman testified	232. Plaintiff's evidence does not
Karschamroon then contacted Andy's	all police officers arrived outside until	constitute a genuine issue of material
family inside the residence, but it	the paramedics arrived looking	fact precluding summary judgment; it is
appeared the only individual who	increasingly more concerned because	immaterial in light of the undisputed
sustained an injury was Plaintiff Bua	Andy was not moving. Per Exhibit 3 of	fact that GG Fire Department
Thi Phan, who had sustained a scraped	Defedants Motion EI-Farra was on	Paramedics were promptly summoned.
elbow. Her injury was measured and	scene at 11:38 and Paramedics did not	In any event, Zimmerman "thinks"
photographed.	arrive until 11:44 so EI-Farra was on	Officers Karschamroon and Gendreau
232. Karschamroon Decl., $\P 937-38$;	scene for minutes prior to the	remained with Andy until the
Gendreau Decl., ¶ 35; Exhibit 4,	paramedics arrival. There has been no	paramedics arrived but concedes he lost
Photograph of Injury; Exhibit 5,	testimony by Karschamroon or	track of them. Further, Plaintiffs do not
Photograph of Screen	Gendreau that they ever personally	deny that Bua Thi Phan was injured in a
	observed any injury nor photographed	struggle with Andy.
	any injury to Bua Phan so there is a	Zimmerman Depo., 264:18-23, 267:12-
	complete lack of foundation for this	14, 307:21-25
	"new" testimony. Again, another	
	example of recreating history by	
	Karschamroon and Gendreau and	
	another reason to disbelieve both of	
	their Declarations. Further, the attached	

	photographs were submitted late and	
	beyond the Motion Cut-Off time.	
	Supporting Evidence: Exhibit A,	
	Deposition of Mark Zimmerman, pp.	
	123: 15-25,246: 7-19, 251: 4,264: 18-	
	25,265: 5-14/18-25,267: 6-8.; Defense	
	Exhibit 3, Dispatch CAD.	
233. An approaching medic was	233. Disputed: Zimmerman testified	233. Plaintiff's evidence does not
informed by Officer El-Farra about the	Andy fell hard to the ground after the	constitute a genuine issue of material
tasing and Andy's labored breathing.	tasering like a "sack of potatoes" and	fact precluding summary judgment; it is
The medic checked for Andy's pulse	saw nothing consistent with Andy	immaterial in light of the undisputed
and informed Officer El-Farra that he	being gently placed on the ground.	fact that GG Fire Department
needed to start CPR. This took Officer	Zimmerman testified Andy was a fat	Paramedics were promptly summoned.
El-Farra completely by surprise. When	guy and the officer could not have	In any event, Zimmerman has had no
he had looked away from Andy to	placed him gently down if they wanted.	medical training, and although his
speak to the medic, Andy had been	Zimmerman testified when Andy hit	eyesight is admittedly impaired, he
breathing. At no time did Officer El-	the ground was dead and never moved	never wears his prescription contact
Farra hear or see Andy stop breathing,	again on his own. Zimmerman testified	lens. Zimmerman observed the
or notice any other physical difficulties.	when the police rolled Andy against an	incident from a distance of
	officers legs he could clearly see Andy	approximately 40-50 feet and could not
204. El-Farra Decl., ¶ 13-17	chest and stomach and he was clearly	tell what small, detailed movements

not breathing. Karschamroon testified Gendreau opened up Andy's eyes and Karschamroon could not tell if Andy was breathing. Zimmerman said he saw Gendreau slapping Andy's face and saying "to stop faking". Bua Phan also testified Andy died immediately after tasering.

Dr. Fukumoto testified the evidence is consistent with Andy being dead immediately after he saw tasered.

Dr. Fukumoto also testified that if officers did see labored or heavy breathing they should have known Andy was in cardiad distress and taken off the handcuffs at a minimum.

Supporting Evidence: Exhibit A, Deposition of Mark Zimmerman, pp.108: 1-11/18-24, 110: 1-13/22-25,

111: 10- 17/18-22, 112: 25, 121: 6-

11/15-24, 123: 15-25, 240: 21-25, 242:

were occurring. Zimmerman testified that it was possible that Andy was breathing after being tased and that he just did not observe it, and that his belief that Andy was dead is not based on any actual evidence. Dr. Fukumoto testified that he has no way of knowing when Andy died and that he relies on the physician's death pronouncement as to the time of death.

Zimmerman Depo., 22:3-7, 162:11-19, 180:20-21; 201:6-12, 293:23-294:12; Fukumoto Depo., 187:19-188:5, 258:7-259:25

	13-25, 243: 11-16, 244: 12-15, 246: 7-	
	19; Exhibit B, Deposition of Daniel	
	Karschamroon, pp. 397: 7-8; Exhibit D,	
	Deposition of Richard Fukumoto,	
	M.D., pp. 90: 13-16, 258: 16-19, 259:	
	2-23, 260: 1-10, 261: 13-15, 264: 21-	
	24, 266: 13-22, 268:6-22, 280: 19-25, 281:	
	10-25, 282: 7-15, 283: 4-16/21-23; Exhibit	
	E, Deposition of Bua Thi Phan, pp.	
	243.1: 16-18; 256.1: 2-5.	
234. After checking the house, the	234. Zimmerman testified all police	234. Plaintiff's evidence does not
Officers Gendreau and Karschamroon	officers arrived outside until the	constitute a genuine issue of material
started toward the front door. They	paramedics arrived looking	fact precluding summary judgment; it is
could then see the paramedics	increasingly more concerned because	immaterial in light of the undisputed
performing CPR on Andy. This was a	Andy was not moving. Zimmerman	fact that GG Fire Department
"shock" and "surprise" to both officers.	testified Andy fell hard to the ground	Paramedics were promptly summoned.
234. Karschamroon Decl., $\P 939$;	after the tasering like a "sack of	In any event, Zimmerman has had no
Gendreau Decl., ¶ 38	potatoes" and saw nothing consistent	medical training, and although his
	with Andy being gently placed on the	eyesight is admittedly impaired, he
	ground. Zimmerman testified Andy	never wears his prescription contact
	was a fat guy and the officer could not	lens. Zimmerman observed the

have placed him gently down if they wanted. Zimmerman testified when Andy hit the ground was dead and never moved again on his own. Zimmerman testified when the police rolled Andy against an officers legs he could clearly see Andy chest and stomach and he was clearly not breathing. Karschamroon testified Gendreau opened up Andy's eyes and Karschamroon could not tell if Andy was breathing. Zimmerman said he saw Gendreau slapping Andy's face and saying "to stop faking". Bua Phan also testified Andy died immediately after tasering.

Dr. Fukumoto testified the evidence is consistent with Andy being dead immediately after he saw tasered.

Dr. Fukumoto also testified that if officers did see labored or heavy

incident from a distance of approximately 40-50 feet and could not tell what small, detailed movements were occurring. Zimmerman testified that it was possible that Andy was breathing after being tased and that he just did not observe it, and that his belief that Andy was dead is not based on any actual evidence. Dr. Fukumoto testified that he has no way of knowing when Andy died and that he relies on the physician's death pronouncement as to the time of death.

Zimmerman Depo., 22:3-7, 162:11-19, 180:20-21; 201:6-12, 293:23-294:12; Fukumoto Depo., 187:19-188:5, 258:7-259:25

	breathing they should have known	
	Andy was in cardiad distress and taken	
	off the handcuffs at a minimum.	
	Supporting Evidence: Exhibit A,	
	Deposition of Mark Zimmerman,	
	pp.108: 1-11/18-24, 110: 1-13/22-25,	
	111: 10- 17/18-22, 112: 25, 121: 6-	
	11/15-24, 123: 15-25, 240: 21-25, 242:	
	13-25, 243: 11-16, 244: 12-15, 246: 7-	
	19; Exhibit B, Deposition of Daniel	
	Karschamroon, pp. 397: 7-8; Exhibit D,	
	Deposition of Richard Fukumoto,	
	M.D., pp. 90: 13-16, 258: 16-19, 259:	
	2-23, 260: 1-10, 261: 13-15, 264: 21-	
	24, 266: 13-22, 268:6-22, 280: 19-25,	
	281: 10-25, 282: 7-15, 283: 4-16/21-	
	23; Exhibit E, Deposition of Bua Thi Phan,	
	pp. 243.1: 16-18; 256.1: 2-5.	
235. Although the paramedics	235. Disputed: Zimmerman testified	235. Plaintiff's evidence does not
rendered emergency care and	all police officers arrived outside until	constitute a genuine issue of material
transported to the hospital, Andy Tran	the paramedics arrived looking	fact precluding summary judgment; it is

did not survive. Toxicology results revealed substantial levels of Diphenhydramine and Trihexylphenidyl in his system at the time of death.

235. Exhibit 6, Toxicology Report

increasingly more concerned because Andy was not moving. Zimmerman testified Andy fell hard to the ground after the tasering like a "sack of potatoes" and saw nothing consistent with Andy being gently placed on the ground. Zimmeman testified Andy was a fat guy and the officers could not have placed him gently down if they wanted. Zimmerman testified when Andy hit the ground was dead and never moved again on his own. Zimmerman testified when the police rolled Andy against an officer's legs he could clearly see Andy chest and stomach and he was clearly not breathing. Karschamroon testifed Gendreau opened up Andy's eyes and Karschamroon could not tell if Andy was breathing. Zimmerman said he saw Gendreau slapping Andy's face and

immaterial in light of Andy's actual resistance while being detained, the totality of the circumstances confronting the officers during that detention, and in light of the undisputed fact that GG Fire Department Paramedics were promptly summoned. In any event, the Plaintiffs' do not dispute the Defendants' UMF, but Dr. Fukumoto opinion that the tasering was a factor in Andy's death was because he already had a bad heart and liver. Dr. Fukumoto testified that he has no way of knowing when Andy died and that he relies on the physician's death pronouncement as to the time of death. Fukumoto Depo., 187:19-188:5, 206:23 - 207:11, 258:7-259:25

saying "to stop faking". Bua Phan also testified Andy died immediately after the tasering. Dr. Fukumoto testified the evidence is consistent with Andy being dead ' immediately after he saw tasered. Dr. Fukumoto also testified that if officers did see labored or heavy breathing they should have known Andy was in cardiad distress and taken off the handcuffs at a minimum. **Supporting Evidence:** Exhibit A, Deposition of Mark Zimmerman, pp. 108: 1-11118-24, 110: 1-13/22-25, 111:10-17/18-22,112: 25,121: 6-11/15-24,123: 15-25,240: 21-25,242: 13-25, 243: 11-16,244: 12-15,246: 7-19; Exhibit B, Deposition of Daniel Karschamroon, pp. 397: 7-8; Exhibit 0, Deposition of Richard Fukumoto, M.D., pp. 90: 13-16,258: 16-19,259: 2-

	23, 260: 1-10,261: 13-15,264: 21-	
	24,266:13-22,268:6-22,280: 19-25,281:	
	10-25,282: 7-15,283: 4-16/21-23;	
	Exhibit E, Deposition of Bua Thi Phan,	
	pp. 243.1: 16-18; 256.1: 2-5.	
236. The Coroner listed the cause of	236. Disputed: Dr. Fukumoto testified	236. Plaintiff's evidence does not
death as "Cardiac arrhythmia during	no drug played any role in Andy's	constitute a genuine issue of material
struggle with law enforcement due to	death and none where at fatal levels.	fact precluding summary judgment; it is
dilated hyertropic cardiomyopathy with	He testified Andy died from being	immaterial in light of Andy's actual
diphenhydramine and trihexylphenidl	tasered and the evidence was consistent	resistance while being detained, the
intoxication."	with Andy dying immediatly after	totality of the circumstances
236. Exhibit 7, Autopsy Report	being hit with the taser. Andy was in	confronting the officers during that
	full cardiac arrest when the paramedics	detention, and in light of the undisputed
	arrived and his eyes were fixed and	fact that GG Fire Department
	dilated. Dr. Fukumoto has been	Paramedics were promptly summoned.
	qualified as an expert in interpreting	In any event, the Plaintiffs' do not
	toxicology results in Courts.	dispute the Defendants' UMF, but Dr.
	Supporting Evidence: Exhibit D,	Fukumoto opinion that the tasering was
	Deposition of Richard Fukumoto,	a factor in Andy's death was because he
	M.D., pp. 63: 1-8, 66: 18-22, 67: 4-5,	already had a bad heart and liver. Dr.
	90: 13-16, 141: 5-25, 142: 6-7, 143: 2-	Fukumoto testified that he has no way

3, 228: 13-25, 229: 20-25, 239: 10-

14/19-25, 240: 1-25,243: 1-25, 245:

17-25, 260: 1-10, 283: 4-16/21-23,

296: 1-7, 304: 1-3/16-18, 305: 8-25,

306: 1-2/10-14, 307: 1-8/22-25, 308: 5-

7, 309: 1-5/18-22, 347: 1-4, 355: 2-9.

of knowing when Andy died and that he relies on the physician's death pronouncement as to the time of death. Fukumoto Depo., 187:19-188:5, 206:23 - 207:11, 258:7-259:25

ADJUDICATION NUMBER 9

PLAINTIFFS' SIXTH CAUSE OF ACTION FOR NEGLIGENCE FAILS AS A MATTER OF LAW

237. On September 3, 2008, at approximately 11:29 a.m., GGPD officers Richard Gendreau and Daniel Karschamroon were dispatched to a report of a "violent, mentally ill male" trying to break into the residence, that someone had been assaulted, and that there was an unknown "weapon" involved

237. **Disputed:** Neither the 911 Transcript nor the Dispatch CAD state anything about a "violent, mentally ill male" trying to break into residence nor assaulting anyone. They both say this was a 5150 call and Andy needs to' be taken to a hospital. The 911 caller never said Andy had weapons, the dispatcher made a mistake.

Supporting Evidence: Defense Exhibit 2, Transcript/Audio 911; Defense Exhibit 3, Dispatch CD. As 237. Neither the 911 audio nor the CAD dispatch refer to "5150" as claimed by Plaintiffs, but do refer to [Andy Tran] as being crazy, with weapons, and having committed an assault. Although requests were made to take [Andy] to the hospital, that does not constitute a genuine issue of material fact precluding summary judgment; officer actions are judged as to all information known or relied upon.

	•	
	will be shown throughout Gendreau's	Karschamroon Decl., $\P\P$ 1-5;
	and Karshamroon's Declaration are	Gendreau Decl., $\P\P$ 1-5; Exhibit 2,
	inconsitent with both their Internal	Transcript/ Audio 911 Recording;
	Affairs interviews and Deposition	Exhibit 3, Dispatch CAD.
	Testimony.	
	Supporting Evidence: Exhibit C,	
	Deposition of Gendreau, pp. 305: 5-25;	
	Exhibit I, Gendreau GGPD Internal	
	Affairs Interview, pp. 17-18.	
238. Police Dispatch as well as the	238. Disputed: Dispatch apparently	238. Plaintiffs do not dispute
CAD printout noted the male subject	did not understand 911 call because the	Defendants' UMF, but rather argue that
(Andy Tran) was a "mental case" and	911 caller said nothing about weapons.	police dispatch erroneously concluded
"crazy," that he had weapons, and that a	Dispatch does indicate major	that Andy had weapons. This does not
crying child could be heard in the	languange barrier between 911 caller	constitute a genuine issue of material
background. The reporting party	and dispacth. The CAD printout clearly	fact precluding summary judgment;
indicated that he was dizzy and he	shows this was a 5150 call and	officer actions are judged as to all
would not answer questions about Andy	Gendreau testified he was given further	information known or relied upon, and
Tran's location, and kept repeating	information of Andy's prior mental	it remains undisputed that Dispatch
"send someone right now, send	health history. The CAD clearly states	relayed information that Andy was
someone right now. Take to hospital."	Andy needs to be taken to the hospital.	crazy, with weapons, and had
238. Karschamroon Decl., ¶ 6	Supporting Evidence: Exhibit C,	committed an assault. Further, the

Gendreau Decl., ¶ 6; Exhibit 2,	Deposition of Gendreau, pp. 305: 5-25;	Plaintiffs citation to Officer Gendreau's
Transcript/Audio 911 recording;	Exhibit I, Gendreau GGPD Internal	deposition testimony does not support
Exhibit 3, Dispatch CAD.	Affairs Interview, pp. 17-18.	their assertion that he was aware of
		Andy's mental health history before
		arriving on scene, but rather only that
		he did not recall telling Internal Affairs
		that he acquired such knowledge. In
		any event, such knowledge would be
		immaterial in light of Andy's actual
		resistance while being detained, and the
		totality of the circumstances
		confronting the officers during that
		detention.
		Transcript/Audio 911 Recording;
		Exhibit 3, Dispatch CAD; Gendreau
		Depo., 305:5-25
239. Officers Karschamroon and	239. Disputed: Mark Zimmerman	239. The Plaintiff's citation to Mark
Gendreau arrived at approximately	testified he never saw Andy place any	Zimmerman's deposition does not
11:36 a.m., with Karschamroon first to	portion of his body in the window; in	support their assertion. Zimmerman
arrive. He noticed a male individual	fact he testified he began yelling as	testified that Andy stopped "directing

who appeared to be trying to break into	Andy taking off screen and Andy then	his attention towards opening the
or enter the residence through a	turned towards him at the same time	window and getting in the house" after
window, and broken screen nearby. As	Karschamroon arrived.	Officer Karschamroon ordered Andy to
Officer Karschamroon approached him,	Supporting Evidence: Exhibit A,	stop. In any event, this does not
his body halfway into the window and	Deposition of Mark Zimmerman, pp.	constitute a genuine issue of material
he appeared to be trying to grab	51: 9-22, 52: 1-24.	fact precluding summary judgment; it is
something from inside.		immaterial in light of Andy's actual
239. Karschamroon Decl., ¶ 7; Exhibit		resistance while being detained, and the
3, Dispatch CAD.		totality of the circumstances
		confronting the officers during that
		detention.
		Zimmerman Depo., 50:1-19, 52:7-16
240. Officer Karschamroon was aware	240. Disputed: Officer Karschamroon	240. The Plaintiffs do not dispute
through Dispatch the subject's name	testified he called Andy by his name	Officer Karschamroon called Andy by
was Andy Tran, so he called out	Andy and he was uncertain if he	name, only the source of that
"Andy" three to four times to get his	learned Andy's name from hearing Mr.	information. Further, the cited
attention. Andy stopped, slowly turned	Zimmerman saying it or hearing	deposition testimony does not indicate
around, and faced Officer	Andy's name from dispatch.	how many times Officer Karschamroon
Karschamroon. Andy was instructed to	Karschamroon testified Andy	called Andy's name. The remainder of
come down from the porch, which he	responded immediately and never	Defendants' UMF remains
eventually did, approaching Officer	testified he yelled 3-4 times.	unchallenged. In any event, the

Karschamroon with his hands at his	Supporting Evidence: Exhibit B,	Plaintiffs' evidence does not constitute
sides.	Deposition of Daniel Karschamroon,	a genuine issue of material fact
240. Karschamroon Decl., $\P\P$ 8-10.	pp. 245:15-25,246: 1-4.	precluding summary judgment; it is
		immaterial in light of Andy's actual
		resistance while being detained, and the
		totality of the circumstances
		confronting the officers during that
		detention.
		Karschamroon Depo., 245:15-25,
		246:1-4
241. Officer Karschamroon could	241. Disputed: Karschamroon testified	241. Plaintiffs' evidence does not
Andy had a blank stare and appeared to	Andy had a confused, puzzled look on	constitute a genuine issue of material
be confused or unsure of what was	his face and appeared in need of	fact precluding summary judgment; it is
going on. Andy stopped his approach	medical help.	immaterial in light of Andy's actual
when he was approximately 20 feet	Karschamroon testified he told Andy to	resistance while being detained, and the
from the officer, who then asked Andy	stop when he was 10-15 feet away and	totality of the circumstances
to come closer. As Andy slowly	put his hands on his head and he	confronting the officers during that
approached to within 10 feet of Officer	complied. He never testified Andy ever	detention. In any event, the deposition
Karschamroon's location, he was	stopped before being told to do so and	testimony of Officer Karschamroon
instructed to stop. Andy stopped, but	was told to come closer.	cited by Plaintiffs is consistent with

maintained his blank expression.	Supporting Evidence: Exhibit B,	Defendants' UMF, namely, that Andy
241. Karschamroon Decl., $\P\P$ 11, 12	Deposition of Daniel Karschamroon,	was instructed to stop either "10 feet"
	pp. 244: 15-25, 259: 1-7, 257: 15-22,	or "10-15 feet" from Officer
	276: 19-25, 279: 14-16; Exhibit J,	Karschamroon's location. The cited
	Karschamroon GGPD Internal Affairs	deposition testimony does not include a
	Interview, pp. 5-6.	question whether Andy stopped at any
		time prior to being so instructed, and
		would be an immaterial variance
		regardless.
242. Andy was instructed to put his	242. Undisputed	242. Undisputed.
hands on top of his head and turn		
around, and he slowly complied with		
the directive. Officer Karschamroon		
then approached Andy and told him to		
interlock his fingers, which he did.		
Andy never spoke, but did appear to		
understand what was being said. 242.		
Karschamroon Decl., $\P\P$ 13, 14		
243. Grabbing Andy's hands, Officer	243. Disputed: Neither the 911	243. 243. Plaintiffs' evidence does
Karschamroon sought to reassure him	Transcript nor the Dispatch CAD state	not dispute that Officer Karschamroon
by saying "there's nothing wrong,"	anything about a "violent, mentally ill	attempted to calm and relax Andy, nor

"we're just here to help you," and to	male" trying to break into residence nor	the nature of the call received by
"calm down" and "relax." However, it	assaulting anyone. They both say this	Dispatch. Neither the 911 audio nor the
was important to get Andy secured and	was a 5150 call and Andy needs to be	CAD dispatch refer to "5150" as
handcuffed as the call indicated he was	taken to a hospital. The 911 caller	claimed by Plaintiffs, but do refer to
a violent mental individual with a	never said Andy had weapons, the	[Andy Tran] as being crazy, with
weapon.	dispatcher made a mistake. Given most	weapons, and having committed an
243. Karschamroon Decl., ¶¶ 14	of Karschamroon's Declaration is	assault. Although requests were made
	vastly different than his Internal Affairs	to take [Andy] to the hospital, that does
	Interview and Deposition Testimony	not constitute a genuine issue of
	anything he says he did is subject to	material fact precluding summary
	impeachment now for prior inconsitent	judgment; officer actions are judged as
	statements, thereby everything in his	to all information known or relied
	Declaration should be viewed with	upon.
	Suspicion.	Karschamroon Decl., ¶¶ 1-5;
	Supporting Evidence: Defense	Gendreau Decl., $\P\P$ 1-5; Exhibit 2,
	Exhibit 2, Transcript/Audio 911;	Transcript/Audio 911 Recording;
	Defense Exhibit 3, Dispatch CAD.	Exhibit 3, Dispatch CAD.
		*
244. As the first handcuff went on	244. Disputed: Officer Karschamroon	244. Plaintiffs argue semantics but do
Andy's right wrist, his hands	never told Internal Affairs Andy's	not dispute any material fact. Officer
immediately tensed up into fists.	hands ever balled into fists and he	Karschamroon testified at his

Officer Richard Gendreau arrived	testified repeatedly that Andy's hands	deposition that when a handcuff was
Officer Karschamroon was trying to	always remained interlocked after he	placed on Andy's right wrist, Andy
separate Andy's now-clenched fists.	was told to do so and he never saw	"tensed" and Officer Karschamroon
244. Karschamroon Decl., ¶ 15	Andy's hands ball into fists.	"could feel his fingers closing, kind of
	Karschamroon further testified he did	curling up from that interlocked
	not know whether Andy's tension was a	position" and "close up as if the fingers
	result of his attempt to follow the last	were curling." Officer Karschamroon
	command given to interlock his fingers.	also stated in his deposition that Andy
	He also testified Andy was never	was "actively resisting" and that he
	aggressive.	"thought it might turn violent."
	Supporting Evidence: Exhibit J,	Karschamroon Depo., 321:22-322:22,
	Karschamroon GGPD Internal Affairs	362:12-17, 366:14-19
	Interview, pp. 7-8; Exhibit B,	
	Deposition of Daniel Karschamroon,	
	pp. 261: 12-18, 264: 17-20, 265: 13-18,	
	268: 9-10, 270: 10-11, 281: 9-25, 284:	
	1-25, 285: 1-6.	
245. Officer Gendreau noticed the	245. Disputed: Officer Gendreau said	245. Plaintiffs do not dispute any
struggle to get Andy's arms behind his	he walked fast and did not run. Officer	material fact, argue semantics, and
back, so he immediately ran over to	Karschamroon testified he never	mischaracterize testimony. Mark
assist. Officer Gendreau was told that	struggled with Andy is Gendreau's	Zimmerman confirmed that Officer

one handcuff was secured, but that Andy was not allowing himself to be cuffed. Officer Karschamroon had a concern that the encounter might turn violent due to Andy's reaction when the first handcuff was placed on his wrist.

245. Karschamroon Decl., ¶¶ 16, 17;

Gendreau Decl., ¶¶ 7, 8

presence nor tried to force Andy's hands behind his back. Karschamroon never said Andy would not allow self to be handcuff and said he told Gendreau Andy was complying but hands tensed when placed first handcuff on. Also Karschamroon and Zimmerman disagree with most of what Gendreau said occured and both Gendreau and Karschamroon have now filed Declarations which are filed with inconsistent statements from their Internal Affairs Interviews and Deposition Testimony their Declarations should be viewed with suspicion.

Supporting Evidence: Exhibit C,
Deposition of Richard Gendreau, pp.
175: 1-25, 176: 1-25, 177: 1-5, 206:
19-25; Exhibit B, Deposition of Daniel
Karschamroon, pp. 285: 11-13;

Gendreau approached at "a pretty fast pace." Officer Gendreau testified that Officer Karschamroon told him that Andy was tensed up and that he couldn't get Andy's hands behind his back into a handcuffing position. This is consistent with Officer Karschamroon's testimony that he told Gendreau that Andy was complying and tensed up after one handcuff was secured. Nothing in the cited testimony disputes that Andy continued to resist after Gendreau arrived. Further, Mark Zimmerman testified that Officer Gendreau did assist Officer Karschamroon by putting "his hands on Andy's hands or on the other officer's hands or in that vicinity" for "about 20 seconds" in what appeared to him as an effort to "keep more control" of Andy. Zimmerman Depo., 92:19-25, 93:16-

	Karschamroon GGPD Internal Affairs	19, 209:7-22; Gendreau Depo.,
	Interview, pp. 9.	175:20-24; Karschamroon Depo.,
		285:11-14.
246. Andy continued to resist, failed	246. Disputed: Officer Karschamroon	246. Plaintiffs' evidence does not
to obey commands, and did not speak.	had full control of Andy and there was	dispute any material fact, and does not
Officer Gendreau could see that Andy's	never a struggle between the two.	indicate that Officer Karschamroon had
method of resistance was "complete	Officer Karschamroon testified he	full control of Andy or that there was
rigidity"; both of his arms were up, his	never struggled with Andy is	no resistance. Plaintiffs ignore Officer
fists were balled, and he was shaking.	Gendreau's presence nor tried to force	Karschamroon testimony that when a
Despite Officer Karschamroon's best	Andy's hands behind his back.	handcuff was placed on Andy's right
efforts to pull Andy's arms down	Karschamroon never said Andy would	wrist, Andy "tensed" and Officer
behind his back, his arms would not	not allow self to be handcuff and said	Karschamroon "could feel his fingers
move.	he told Gendreau Andy was complying	closing, kind of curling up from that
246. Karschamroon Decl., ¶ 16	but hands tensed when placed first	interlocked position" and "close up as if
Gendreau Decl., ¶ 9	handcuff on. Also given Karschamroon	the fingers were curling." Officer
	and Zimmennan disagree with most of	Karschamroon also stated in his
	what Gendreau said occured and both	deposition that Andy was "actively
	Gendreau and Karschamroon have now	resisting" by not allowing his arms to
	filed Declarations which are filed with	be pulled apart and providing tension to
	inconsistent statements from their	pull his arms together, and that he
	Internal Affairs Interviews and	"thought it might turn violent."

	Deposition Testimony their	Nothing in Plaintiffs' cited testimony
	Declarations should be viewed with	disputes that Andy continued to resist
	suspicion.	after Gendreau arrived. Further, Mark
	Supporting Evidence: Exhibit C,	Zimmerman testified that Officer
	Deposition of Richard Gendreau, pp.	Gendreau did assist Officer
	175: 1-25, 176: 1-25, 177: 1-5,206: 19-	Karschamroon by putting "his hands on
	25; Exhibit B, Deposition of Daniel	Andy's hands or on the other officer's
	Karschamroon, pp. 285: 11-13;	hands or in that vicinity" for "about 20
	Karschamroon GGPD Internal Affairs	seconds" in what appeared to him as an
	Interview, pp. 9.	effort to "keep more control" of Andy.
		Karschamroon Depo., 321:22-322:22,
		280:12-23, 362:12-17, 366:14-19,
		Zimmerman Depo., 92:19-25, 93:16-
		19, 209:7-22
247 To prevent a possible escape,	247. Disputed: Officer Karschamroon	247. Plaintiffs do not dispute any
Officer Gendreau moved in front of	testified he was a foot from Andy and	material fact precluding summary
Andy. From that position, he could see	1-3 feet from Gendreau and He never	judgment. The assertion that Andy did
that Andy was shaking and he began to	heard Andy growl or see his foaming at	not try to escape does dispute Officer
growl. Andy was not blinking, his	the mouth, or see Andy shaking other	Gendreau's motivation for positioning
pupils appeared to be dilated, and he	than when Karschamroon shook Andy	himself in front of Andy. Further,
had saliva coming from the corner of	hands, which moved, to let Andy know	Officer Karschamroon was positioned

his mouth, almost as though he was	he was still behind him. Gendreau	behind Andy, and was not in a position
foaming at the mouth. Officer	testified he never feared Andy would	to see Andy's face at the time he was
Gendreau felt like Andy was looking	flee or run. Karschamroon testified	tased. As to the issue of Andy
straight through him.	Andy never made a movement	growling, Mark Zimmerman testified
247. Karschamroon Decl., ¶ 16	consisting with fleeing or running away	that although he never saw Andy's lips
Gendreau Decl., ¶¶ 10, 11	Supporting Evidence: Exhibit B,	moving, he heard some audible things
	Deposition of Daniel Karschamroon,	coming out of his mouth. Zimmerman
	pp. 261: 12-18, 264: 17-20, 284: 1-25,	also testified that he could see subtle
	285: 1-6, 330: 11-15; Declaration of	movement going on between the
	Daniel Karschamroon, pp. 384: 18,	officers and Andy and that there could
	385: 1-5; Exhibit C, Deposition of	have been a "whole 'nother [sic] set of
	Richard Gendreau, pp. 174: 14-17;	scenarios going on" that he did not see.
	176: 1-25, 177: 1-10,182: 2-23,187: 1-	Karschamroon Depo., 348:9-15,
	8,220: 1-24, 225: 17-24, 266: 1-10.	355:16-19, Zimmerman Depo., 217:3-
		9, 222:11-223:13, 276:22-25
248. In a casual manner, Officer	248. Disputed: Officer Karschamroon	248. Plaintiffs do not dispute
Gendreau said words to the effect of,	testified the only thing he heard	Defendants' UMF that the officers
"Hey, dude, just calm down," and	Gendreau say was "Hey, dude, calm	attempted to relax and calm Andy while
advised Andy to relax, put his hands	down." Gendreau never ackowledged	attempting to secure him, but rather
behind his back, and that "we're not	he said "dude calm down".	dispute the exact words spoken. This
here to hurt you." Officer	Karschamrron testified Gendreau never	does not create a genuine issue of

Karschamroon was reminding Andy to	told Andy to put his hands behind his	material fact precluding summary
relax as well, but he was also shaking	back and the only shaking he saw from	judgment. Further, it is immaterial that
Andy's still clenched hands to let him	Andy was Karschamroon shaking	Officer Karschamroon may not have
know he still needed to be handcuffed.	Andy to let him know he was there.	said anything to Andy about being
248. Karschamroon Decl., $\P\P$ 19, 20;	Karschamroon testifed he never said	handcuffed since the act of attempting
Gendreau Decl., $\P\P$ 12, 13	anything to Andy about being	to handcuff him established the
	handcuffed.	officer's intention. Officer
	Supporting Evidence: Exhibit B,	Karschamroon's deposition testimony
	Deposition of Daniel Karschamroon,	that Andy was not allowing his arms to
	pp. 282, 345: 1-18, 268: 19-23, 269: 1-	be pulled apart and was providing
	4; 419, Exhibit B, Deposition of Daniel	tension to pull his arms together
	Karschamroon, pp. 328: 1-7,330: 11-	demonstrates resistance to that
	15/17-25, 337: 10-16, 340: 8-9, 341: 7-	intention.
	16.	Karschamroon Depo., 321:22-322:22,
		280:12-23, 362:12-17, 366:14-19
249. Andy continued to ignore the	249. Disputed: Gendreau said he did	249. Plaintiffs do not dispute any
officers' orders, and concern grew that	not believe Andy understood anything	material fact precluding summary
the dangling handcuff could be used as	he said so how can he claim Andy	judgment and mischaracterize
a weapon if Andy decided to swing his	ignored an order? Further,	testimony. Officer Karschamroon did
arm. Both officers then attempted to	Karschamroon testified that neither	not testify that "relax" and "calm
pry Andy's arms down but could not	"relax" or "dude calm down" were	down" were not lawful orders.

overcome his flexed/locked position. A pain compliance technique performed by Officer Gendreau did nothing.

249. Karschamroon Decl., ¶¶ 21, 22;

Gendreau Decl., $\P \P$ 12, 14-16

lawful orders. Both Karshamroon and Zimmennan said Gendreau never struggled with Andy except to taser him. Karschamroon testified repeatedly he never saw Gendreau touch Andy and did not struggle either alone or with Gendreau to get Andy's ann behind his back.

Karschamroon testified he always had ahold of the loose handcuff so it could not be dangling and used as a weapon. Again, given the many new statements which are completely inconsitent with statements made to Internal Affairs and during Deposition testimony puts the credibilty of Karschamroon and Gendreau is great doubt and their Declarations should be viewed with extreme caution.

Supporting Evidence: Exhibit B, Deposition of Daniel Karschamroon,

Although he did testify he had not received training that such commands were lawful orders, he stated that the commands given were appropriate given the goal of relaxing Andy. Officer Karschamroon also stated in his deposition that Andy was "actively resisting" by not allowing his arms to be pulled apart and providing tension to pull his arms together, and that he "thought it might turn violent." Nothing in Plaintiffs' cited testimony disputes that Andy continued to resist after Gendreau arrived. Further, Mark Zimmerman testified that Officer Gendreau did assist Officer Karschamroon by putting "his hands on Andy's hands or on the other officer's hands or in that vicinity" for "about 20 seconds" in what appeared to him as an effort to "keep more control" of Andy.

pp. 273: 8-11, 274, 292: 17-23, 293: 1, 331: 16-25, 332: 18-21, 333: 7-11; Karschamroon GGPD Internal Affairs Interview, pp. 7-8.; Exhibit A, Deposition of Mark Zimmerman, pp. 79:11-20,80: 10-16, 81: 4-5, 83: 18-25,85:1-10,87: 3-7/16-23,97: 5-6, 100: 1-25, 102: 4-9/20-24,150: 20-25, 151: 9-11, 197:20-25,198: 1-5,209:23-25,222:17-25,224: 6-12, 276: 10-20,277: 1-4, 278: 18-21.

Nothing in Zimmerman's testimony disputes the officers' account of Andy's resistance other than his own speculation. Zimmerman testified that he could see subtle movement going on between the officers and Andy and that there could have been a "whole 'nother [sic] set of scenarios going on" that he did not see. He could not hear what was being said, and although his eyesight is admittedly impaired, he never wears his prescription contact lens. Zimmerman observed the incident from a distance of approximately 40-50 feet could not tell what small, detailed movements were occurring. He does not know whether the officers tried to move Andy's hands from the top of his head, and admits that many things could have been said or done which he could not observe or

		hear. While Zimmerman testified that
		Andy's hands were on his head at all
		times, he cannot say whether there was
		any kind of struggle
		Karschamroon Depo., 321:22-322:22,
		280:12-23, 283:20-284:20, 362:12-17,
		366:14-19, Zimmerman Depo., 22:3-7,
		82:11-18, 92:19-25, 93:16-19, 96:2-10,
		100:7-20, 162:11-19, 187:3-11,
		200:11-24, 201:6-12, 209:7-22, 217:3-
		9, 222:11-223:13, 276:22-25, 287:25-
		288:12.
250. Officer Gendreau thought that if a	250. Disputed: Karschamroon and	250. Plaintiffs' evidence does not
fight ensued, it was going to be a bad	Zimmerman both testified Gendreau	dispute any material fact. Plaintiffs
one given the strength that Andy had	never struggled to force Andy's hands	ignore Officer Karschamroon's
exhibited when resisting both officers	behind back. Karschamroon said	testimony that when a handcuff was
attempt to lower his arms. Officer	Gendreau never touched Andy.	placed on Andy's right wrist, Andy
Karschamroon was similarly concerned	Karschamroon testified when he shook	"tensed" and Officer Karschamroon
about officer safety.	Andy's hands they moved so the	"could feel his fingers closing, kind of
250. Karschamroon Decl., ¶ 21;	extraordinary strength Gendreau said	curling up from that interlocked
Gendreau Decl., ¶ 19	Andy had is disputed by	position" and "close up as if the fingers

Karschamroon.

Supporting Evidence: Exhibit B,
Deposition of Daniel Karschamroon,
pp.273: 8-11,274, 292: 17-23, 293: 1,
331: 16-25, 332: 18-21, 333: 7-11;
Karschamroon GGPD Internal Affairs
Interview, pp. 7-8.; Exhibit A,
Deposition of Mark Zimmerman,
pp.79: 11-20, 80: 10-16, 81:4-5, 83:
18-25, 85: 1-10, 87: 3-7/16-23, 97: 5-6,
100: 1-25, 102: 4-9/20-24, 150: 20-25,
151: 9-11, 197:20-25, 198: 1-5, 209
:23-25, 222: 17-25, 224: 6-12, 276: 1020, 277: 1-4, 278: 18-21.

were curling." Officer Karschamroon also stated in his deposition that Andy was "actively resisting" by not allowing his arms to be pulled apart and providing tension to pull his arms together, and that he "thought it might turn violent." Nothing in Plaintiffs' cited testimony disputes that Andy continued to resist after Gendreau arrived. Further, Mark Zimmerman testified that Officer Gendreau did assist Officer Karschamroon by putting "his hands on Andy's hands or on the other officer's hands or in that vicinity" for "about 20 seconds" in what appeared to him as an effort to "keep more control" of Andy. Nothing in Zimmerman's testimony disputes the officers' account of Andy's resistance other than his own speculation. Karschamroon Depo., 321:22-322:22,

		280:12-23, 362:12-17, 366:14-19,
		Zimmerman Depo., 22:3-7, 82:11-18,
		92:19-25, 93:16-19, 96:2-10, 100:7-20,
		162:11-19, 187:3-11, 200:11-24,
		201:6-12, 209:7-22, 217:3-9, 222:11-
		223:13, 276:22-25, 287:25-288:12.
251. As Andy continued to resist	251. Disputed: Karschamroon	251. Plaintiffs do not dispute any
officer commands by remaining rigid	testified after he told Andy to interlock	material fact precluding summary
and non-responsive, Officer Gendreau	his fingers Andy was only told to	judgment and mischaracterize
decided to take out his Taser. Andy	relax or "dude calm down" which	testimony. Officer Karschamroon
was informed several times that if he	Karschamroon testified were not lawful	testified that Officer Gendreau did warn
did not comply, he would be tased.	orders. Gendreau testified he did pot	Andy that he would be tased if he did
Andy continued to resist, so Officer	believe Andy understood anything he	not calm down, and Zimmerman
Gendreau deployed his taser once in	said so it would be difficult for him to	testified that Officer Gendreau had his
Andy's thigh for a cycle of five	"resist" non lawful "commands".	hands on top of Andy's hands for about
seconds.	Karschamroon testified Gendreau told	20 seconds before stepping to the side
251. Karschamroon Decl., ¶¶ 22-25;	him "Danny I'm just going to Tase	to taser him.
Gendreau Decl., ¶¶ 20-23	him" and Karschamroom testified	Karschamroon Depo., 331:6-12,
	Gendreau never told Andy he was	Zimmerman Depo., 208:8-209:17
	going to be tasered. Zimmerman said	

	Gendreau stepped to Andy's side and	
	immediatly tasered him.	
	Supporting Evidence: Exhibit A,	
	Deposition of Mark Zimmerman, pp.	
	108: 1-11/18-24, 110: 1-13/22-25, 111:	
	10-17/18-22, 112: 25, 121: 6-11/15-24,	
	123: 15-25, 240: 21-25, 242: 13-25,	
	243: 11-16, 244: 12-15, 246: 7-19;	
	Exhibit B, Deposition of Daniel	
	Karschamroon, pp. 397: 7-8; Exhibit D,	
	Deposition of Richard Fukumoto,	
	M.D., pp. 90: 13-16, 258: 16-19, 259:	
	2-23, 260: 1-10, 261: 13-15, 264: 21-	
	24, 266: 13-22, 268:6-22, 280: 19-25,	
	281: 10-25, 282: 7-15, 283: 4-16/21-	
	23; Exhibit E, Deposition of Bua Thi	
	Phan, pp. 243.1: 16-18; 256.1: 2-5.	
252. Prior to deploying the taser,	252. Disputed: GGPD General Order	252. 252. Plaintiffs do not dispute any
Officer Gendreau also attempted to	5.31 states the IVS Unit must be	material fact precluding summary
activate his audio recording system and	activated when a detention was going	judgment. The General Orders are
the one in his police unit, although he	to occur. Gendreau testified he saw	simply "guidelines," and the purpose of

was too far away for remote avtivation. Based on the nature of the call and rapidly evolving events, activating a recorder or his in-unit video during this incident was "not at the forefront" of Officer Karschamroon's thoughts.

252. Karschamroon Decl., ¶ 41;

Gendreau Decl., ¶ 20

Karschamroon detaining Andy when he arrived yet failed to activate his IVS Unit; Karschamroon testified he thought IVS Unit activation was completely within his discretion. No where in the GGPD General Orders does it indicate "rapidly evolving events" warrant ignoring orders. The fact Gendreau claims to have attempted to activate his IVS Unit shows he had time and should have called for a supervisor and medics before tasering Andy as required by GGPD General Order 2.25. Further, given the major credibility issues of all involved officers Plaintiffs do not believe the Court should not accept the IVS recordings were destroyed. GGPD General Order 5.31 states if IVS fails to activate a work order must be completed and Gendreau never did the

the In-Car Video System (IVS) is to provide an accurate, unbiased audiovisual record of enforcement related and non-criminal incidents that will enhance criminal prosecutions and limit civil liabilities. The policy is non-punitive in nature, and no disciplinary action for violations of this policy will be proposed unless the employee refuses either actively or passively, as demonstrated by repeated instances of his/her failure. Summoning Fire Department Paramedics before the use of a Taser is only recommended, if practical, under the circumstances. General Order 2.24, 5.31, General Order, "Statement by the Chief of Police"

	required paperwwork.	
	Supporting Evidence: Exhibit C,	
	Deposition of Richard Gendreau, pp.	
	97-98, 109: 20-23; Exhibit H, GGPD	
	General Order 2.24, 5.31.	
253. Officer Gendreau was trained that	253. Disputed: Gendreau testified he	253. Plaintiff's evidence does not
one of the best ways to get a subject on	believed that Andy was under the	constitute a genuine issue of material
the ground is to tase them in the leg.	influence of a Central Nervous System	fact precluding summary judgment; it is
His goal was to take Andy into custody	stimulant before he tasered Andy and	immaterial in light of Andy's actual
without any further risk of injury to	knew and had been trained that tasering	resistance while being detained, and the
Andy, Officer Karschamroon or	Andy could cause his immediate death.	totality of the circumstances
himself.	Given theses facts it is difficult to	confronting the officers during that
253. Gendreau Decl., ¶ 22	believe Gendreau did not believe to	detention. Officer Karschamroon
	injure Andy. Further, GGPD General	testified that he did not feel it was
	Orders state a medic and supervisor	necessary to take out any weapon only
	should be called prior to tasering a	up to the point of placing the first
	subject. Gendreau testified he tried to	handcuff on Andy's wrist. Officer
	activate his IVS and Lux testified it	Gendreau testified that Andy's conduct
	would have take 1-3 seconds to call for	and appearance was indicative of
	a medic and supervisor. Gendreau said	someone who potentially is going to

Andy was not resisting, being aggressive or looking like would flee when he wass tasered so there was no rush to taser Andy. Andy was therefore a non comabative subject per GGPD General Order 2.6 and Lux testified he trained his students including Gendreau not taser such subjects.

Karschamroon testified he saw no reason to take out any weapons against Andy and had no idea why Gendreau was tasering Andy. Lux testified Karshamroon as the first officer on scene should have detennined why Gendreau was going to taser Andy.

Supporting Evidence: Exhibit B,

Deposition of Daniel Karschamroon,

pp. 251: 17-25, 252: 1-118, 355: 21-24,

357: 3-18, 360: 1-6; Exhibit C,

Deposition of Richard Gendreau, pp.

96: 1-16,174: 14-17; 176: 1-25, 177: 1-

throw a punch. Plaintiffs' misrepresent the testimony of Benedict Lux, which was based on incomplete hypothetical questioning and not on facts relevant to this case.

Karschamroon Depo., 251:21-252:6, Gendreau Depo., 178:5-16.

	10, 182: 2-23, 187: 1-8, 220: 1-24, 225:	
	17-24, 266: 1-10, 327: 17-22, 328: 1-	
	14/20-25, 329: 1-18; Exhibit F,	
	Deposition of Benedict Lux, pp. 176:	
	15-22,177:7-20,178:5-14,179: 5-12,	
	204: 1-25, 205: 1-15, 206: 9-22, 209:	
	1-25, 210: 8-18, 211: 9-11, 212: 13-18,	
	244: 14-25, 247: 21-25, 252: 21-25, pp.	
	253: 1-3/5-12, 254, 255: 1-5/12-15;	
	Exhibit H, GGPD General Order 2.24,	
	2.6; Exhibit J, Karschamroon GGPD	
	Internal Affairs Interview, pp. 15.	
254. Once Andy was tased, he began to	254. Disputed: Zimmerman testified	254. Plaintiff's evidence does not
fall backward toward Officer	Andy fell hard to the ground after the	constitute a genuine issue of material
Karschamroon, who caught him and	tasering like a "sack of potatoes" and	fact precluding summary judgment; it is
laid him forward onto the ground.	saw nothing consistent with Andy	immaterial in light of Andy's actual
Andy also released his grip, and once	being gently placed on the ground.	resistance while being detained, and the
the taser cycle stopped, the officers	Zimmeman testified Andy was a fat	totality of the circumstances
were able to bring his left arm behind	guy and the officers could not have	confronting the officers during that
his back and apply the other handcuff to	placed him gently down if they wanted.	detention. Zimmerman has had no
secure his arms.	Zimmerman testified when Andy hit	medical training. Although his eyesight

	T	T
254. Karschamroon Decl., ¶ 26;	the ground was dead and never moved	is admittedly impaired, he never wears
Gendreau Decl., $\P\P$ 24, 25	again on his own.	his prescription contact lens.
	Supporting Evidence: Exhibit A,	Zimmerman observed the incident from
	Deposition of Mark Zimmerman, pp.	a distance of approximately 40-50 feet
	108: 1-11/18-24, 110: 1-13, 240: 21-	and could not tell what small, detailed
	25, 242: 13-25,243: 11-16.	movements were occurring.
		Zimmerman testified that it was
		possible that Andy was breathing after
		being tased and that he just did not
		observe it, and that his belief that Andy
		was dead is not based on any actual
		evidence
		Zimmerman Depo., pp. 22:3-7, 162:11-
		19, 180:20-21; 201:6-12, 293:23-
		294:12
255. At approximately 11:38 a.m.,	255. Disputed: GG Fire Department	255. Plaintiff's evidence does not
Officer Gendreau advised over his	paramedics were not dispached until	constitute a genuine issue of material
police radio that the situation was	11:39:38. Per Lux and GGPD General	fact precluding summary judgment; it
stable, but that Andy had been tased and	Order 2.24 states medics should be	remains undisputed that GG Fire
he requested Garden Grove Fire	called before any tasering and a	Department paramedics were promptly
Department to respond to examine	supervisor must be called before a	dispatched after Andy was tased.

Andy per their protocol when a subject	tasering. Sergeant Wagner was not	General Orders are guidelines and not
is tased. At approximately 11:39 a.m.,	requested until 11:46.	an independent mechanism to pursue
Garden Grove Fire Department was	Supporting Evidence: Exhibit D,	civil liability.
dispatched to the incident scene in	Deposition of Richard Fukumoto,	General Orders, "Statement by the
reference to Andy being tased.	M.D., pp. 90: 13-16, 282: 7-15, 283:4-	Police Chief"
255. Karschamroon Decl., ¶ 27;	16/21-23; Exhibit F, Deposition of	
Gendreau Decl., ¶ 26; Exhibit 3	Benedict Lux, pp. 249: 15-25, 250: 9-	
Dispatch CAD	10, 260: 13-25, 262: 15-25, 263: 1-3;	
	Exhibit H, GGPD General Order 2.24;	
	Exhibit K., Sergeant Wagner's report.	
256. As he was handcuffed and on the	256. Disputed: Zimmerman testified	256. Plaintiff's evidence does not
ground, Andy looked in various	Andy fell hard to the ground after the	constitute a genuine issue of material
directions. Officer Gendreau continued	tasering like a "sack of potatoes" and	fact precluding summary judgment; it is
to instruct him to relax, and informed	saw nothing consistent with Andy	immaterial in light of the undisputed
him they were in the process of getting	being gently placed on the ground.	fact that GG Fire Department
him medical attention. When asked if	Zimmeman testified Andy was a fat	Paramedics were promptly summoned.
he was doing okay, Andy remained	guy and the officers could not have	In any event, Zimmerman has had no
unresponsive but continued to look	placed him gently down if they wanted.	medical training, and although his
around.	Zimmerman testified when Andy hit	eyesight is admittedly impaired, he
256. Karschamroon Decl., ¶ 30;	the ground was dead and never moved	never wears his prescription contact
Gendreau Decl., ¶ 27	again on his own. Karschamroon	lens. Zimmerman observed the incident

testifed Gendreau opened up Andy's eyes and Karschamroon could not tell if Andy was breathing. Zimmerman said he saw Gendreau slapping Andy's face and saying "to stop faking". Bua Phan also testified Andy died immediately after the tasering. Dr. Fukumoto testified the evidence is consistent with Andy being dead immediately after he saw tasered. Supporting Evidence: Exhibit A, Deposition of Mark Zimmerman, pp. 108: 1-11/18-24, 110: 1-13/22-25, 111: 10-17/18-22, 112: 25, 121: 6-11/15-24,123: 15,-25, 240: 21-25, 242: 13-25, 243: 11-16,244: 12-15,246: 7-19; Exhibit B, Deposition of Daniel Karschamroon, pp. 397: 7-8; Exhibit D, Deposition of Richard Fukumoto, M.D., pp. 90: 13-16, 258: 16-19, 259:2-23, 260: 1-10, 261: 13-15, 264: 21-24,

from a distance of approximately 40-50 feet and could not tell what small, detailed movements were occurring. Zimmerman testified that it was possible that Andy was breathing after being tased and that he just did not observe it, and that his belief that Andy was dead is not based on any actual evidence. Dr. Fukumoto testified that he has no way of knowing when Andy died and that he relies on the physician's death pronouncement as to the time of death. Zimmerman Depo., 22:3-7, 162:11-19, 180:20-21; 201:6-12, 293:23-294:12; Fukumoto Depo., 187:19-188:5,

258:7-259:25

	266: 13-22, 268:6-22, 280: 19-25, 281:	
	10-25, 282: 7-15, 283: 4-16/21-23;	
	Exhibit E, Deposition of Bua Thi Phan,	
	pp. 243.1: 16-18; 256.1: 2-5.	
257. After the tasing, a third officer	257. Disputed: Zimmerman testified	257. Plaintiff's evidence does not
arrived on scene, Officer Amir El-Farra.	Andy fell hard to the ground after the	constitute a genuine issue of material
The officers decided to roll Andy over	tasering like a "sack of potatoes" and	fact precluding summary judgment; it is
on his back to observe him from the	saw, nothing consistent with Andy	immaterial in light of the undisputed
front. His eyes were closed, but a check	being gently placed on the ground.	fact that GG Fire Department
by Officer Gendreau found they were	Zimmeman testified Andy was a fat	Paramedics were promptly summoned.
dilated. Because of that and Andy's	guy and the officers could not have	In any event, Zimmerman has had no
labored breathing, the officers decided	placed him gently down if they wanted.	medical training, and although his
to sit him up against Officer El-Farra's	Zimmerman testified when Andy hit	eyesight is admittedly impaired, he
leg, thinking it might help with his	the ground was dead and never moved	never wears his prescription contact
breathing and help snap him out of the	again on his own. Zimmerman testified	lens. Zimmerman observed the
trance he appeared to be in.	when the police rolled Andy against an	incident from a distance of
257. Karschamroon Decl., $\P\P$ 29-34;	officers legs he could clearly see Andy	approximately 40-50 feet and could not
Gendreau Decl., ¶¶ 31-32; El-Farra	chest and stomach and he was clearly	tell what small, detailed movements
Decl., ¶¶6-8	not breathing. Karschamroon testifed	were occurring. Zimmerman testified
	Gendreau opened up Andy's eyes and	that it was possible that Andy was
	Karschamroon could not tell if Andy	breathing after being tased and that he

was breathing. Zimmerman said he saw Gendreau slapping Andy's face and saying "to stop faking". Bua Phan also testified Andy died immediately after the tasering.

Dr. Fukumoto testified the evidence is consistent with Andy being dead immediately after he saw tasered.

Supporting Evidence: Exhibit A,

Deposition of Mark Zimmennan, pp.

108: 1-11/18-24, 110: 1-13/22-25, 111:

10-17/18-22,112: 25, 121: 6-11/15-24,

123: 15-25; 240: 21-25; 242: 13-25,

243: 11-16, 244: 12-15, 246: 7-19;

Exhibit B, Deposition of Daniel

Karschamroon, pp. 397: 7-8; Exhibit D,

Deposition of Richard Fukumoto,

M.D., pp. 90: 13-16, 258: 16-19, 259:

2-23, 260: 1-10, 261: 13-15, 264: 21-

24,266: 13-22, 268:6-22, 280: 19-25,

281: 10-25, 282: 7-15, 283: 4-16/21-

just did not observe it, and that his belief that Andy was dead is not based on any actual evidence. Dr. Fukumoto testified that he has no way of knowing when Andy died and that he relies on the physician's death pronouncement as to the time of death.

Zimmerman Depo., 22:3-7, 162:11-19, 180:20-21; 201:6-12, 293:23-294:12; Fukumoto Depo., 187:19-188:5, 258:7-259:25

	23; Exhibit E, Deposition of Bua Thi	
	Phan, pp. 243.1: 16-18; 256.1: 2-5.	
258. Given Andy's dilated pupils in	258. Disputed: Gendreau testified he	258. Plaintiff's evidence does not
bright sunlight and his rapid pulse,	believed that Andy was under the	constitute a genuine issue of material
Officer Gendreau did consider that he	influence of a Central Nervous System	fact precluding summary judgment; it is
may be under the influence of a	stimulant before he tasered Andy and	immaterial in light of Andy's actual
controlled substance, but he never had	knew and had been trained that tasering	resistance while being detained, and the
the opportunity to do a full evaluation.	Andy could cause his immediate death.	totality of the circumstances
258. Gendreau Decl., ¶ 37	Given theses facts it is difficult to	confronting the officers during that
	believe Gendreau did not believe to	detention. Officer Karschamroon
	injure Andy. Further, GGPD General	testified that he did not feel it was
	Orders state a medic and supervisor	necessary to take out any weapon only
	should be called prior to tasering a	up to the point of placing the first
	subject. Gendreau testified he tried to	handcuff on Andy's wrist. Officer
	activate his IVS and Lux testified it	Gendreau testified that Andy's conduct
	would have take 1-3 seconds to call for	and appearance was indicative of
	a medic and supervisor. Gendreau said	someone who potentially is going to
	Andy was not resisting, being	throw a punch. Plaintiffs' misrepresent
	aggressive or looking like would flee	the testimony of Benedict Lux, which
	when he wass tasered so there was no	was based on incomplete hypothetical
	rush to taser Andy. Andy was therefore	questioning and not on facts relevant to

a non comabative subject per GGPD

General Order 2.6 and Lux testified he trained his students including Gendreau not taser such subjects.

Karschamroon testified he saw no reason to take out any weapons against Andy and had no idea why Gendreau was tasering Andy. Lux testified Karshamroon as the first officer on scene should have detennined why Gendreau was going to taser Andy.

Supporting Evidence: Exhibit B,

Deposition of Daniel Karschamroon,

pp. 251: 17-25, 252: 1-118, 355: 21-24,

357: 3-18, 360: 1-6; Exhibit C,

Deposition of Richard Gendreau, pp.

96: 1-16,174: 14-17; 176: 1-25, 177: 1-

10, 182: 2-23, 187: 1-8, 220: 1-24, 225:

17-24, 266: 1-10, 327: 17-22, 328: 1-

14/20-25, 329: 1-18; Exhibit F,

Deposition of Benedict Lux, pp. 176:

this case.

Karschamroon Depo., 251:21-252:6,

Gendreau Depo., 178:5-16.

	15-22,177:7-20,178:5-14,179: 5-12,	
	204: 1-25, 205: 1-15, 206: 9-22, 209:	
	1-25, 210: 8-18, 211: 9-11, 212: 13-18,	
	244: 14-25, 247: 21-25, 252: 21-25, pp.	
	253: 1-3/5-12, 254, 255: 1-5/12-15;	
	Exhibit H, GGPD General Order 2.24,	
	2.6; Exhibit J, Karschamroon GGPD	
	Internal Affairs Interview, pp. 15.	
259. As Andy was seated upright and	259. Disputed: Zimmerman testified	259. Plaintiff's evidence does not
leaning against Officer El-Farra's leg,	Andy fell hard to the ground after the	constitute a genuine issue of material
his breathing was observed to be	tasering like a "sack of potatoes" and	fact precluding summary judgment; it is
labored but no officer believed the	saw, nothing consistent with Andy	immaterial in light of the undisputed
situation to be critical. Officer	being gently placed on the ground.	fact that GG Fire Department
Karschamroon saw nothing to suggest a	Zimmeman testified Andy was a fat	Paramedics were promptly summoned.
life-threatening situation, Officer	guy and the officers could not have	In any event, Zimmerman has had no
Gendreau "felt comfortable" upon	placed him gently down if they wanted.	medical training, and although his
hearing the approach of the medics, and	Zimmerman testified when Andy hit	eyesight is admittedly impaired, he
Officer El-Farra could see Andy's chest	the ground was dead and never moved	never wears his prescription contact
rising and falling.	again on his own. Zimmerman testified	lens. Zimmerman observed the
259. Karschamroon Decl., ¶ 35;	when the police rolled Andy against an	incident from a distance of
Gendreau Decl., ¶¶ 33-34; El-Farra	officers legs he could clearly see Andy	approximately 40-50 feet and could not

Decl., ¶¶10	chest and stomach and he was clearly	tell what small, detailed movements
	not breathing. Karschamroon testifed	were occurring. Zimmerman testified
	Gendreau opened up Andy's eyes and	that it was possible that Andy was
	Karschamroon could not tell if Andy	breathing after being tased and that he
	was breathing. Zimmerman said he saw	just did not observe it, and that his
	Gendreau slapping Andy's face and	belief that Andy was dead is not based
	saying "to stop faking". Bua Phan also	on any actual evidence. Dr. Fukumoto
	testified Andy died immediately after	testified that he has no way of knowing
	the tasering.	when Andy died and that he relies on
	Dr. Fukumoto testified the evidence is	the physician's death pronouncement as
	consistent with Andy being dead	to the time of death.
	immediately after he saw tasered.	Zimmerman Depo., 22:3-7, 162:11-19,
	Dr. Fukumoto also testified that if	180:20-21; 201:6-12, 293:23-294:12;
	officers did see labored or heavy	Fukumoto Depo., 187:19-188:5,
	breathing they should have known	258:7-259:25
	Andy was in cardiad distress and taken	
	off the handcuffs at a minimum.	
	Supporting Evidence: Exhibit A,	
	Deposition of Mark Zimmerman,	
	pp.108: 1-11/18-24, 110: 1-13/22-25,	

111: 10- 17/18-22, 112: 25, 121: 6-

	11/15-24, 123: 15-25, 240: 21-25, 242:	
	13-25, 243: 11-16, 244: 12-15, 246: 7-	
	19; Exhibit B, Deposition of Daniel	
	Karschamroon, pp. 397: 7-8; Exhibit D,	
	Deposition of Richard Fukumoto,	
	M.D., pp. 90: 13-16, 258: 16-19, 259:	
	2-23, 260: 1-10, 261: 13-15, 264: 21-	
	24, 266: 13-22, 268:6-22, 280: 19-25, 281:	
	10-25, 282: 7-15, 283: 4-16/21-23; Exhibit	
	E, Deposition of Bua Thi Phan, pp.	
	243.1: 16-18; 256.1: 2-5.	
260. Officer Gendreau asked Officer	260. Zimmerman testified all police	260. Plaintiff's evidence does not
El-Farra to stay with Andy as he and	officers arrived outside until the	constitute a genuine issue of material
Officer Karschamroon ascertained the	paramedics arrived looking	fact precluding summary judgment; it is
welfare or condition of the calling party	increasingly more concerned because	immaterial in light of the undisputed
or family considering the nature of the	Andy was not moving. Per Exhibit 3	fact that GG Fire Department
call and the need to determine if anyone	of Defendants Motion El-Farra was on	Paramedics were promptly summoned.
had been injured or attacked by Andy.	scene at 11:38 and Paramedics did not	In any event, Zimmerman "thinks"
Officer El-Farra estimates that he was	arrive until 11:44 so El-Farra was on	Officers Karschamroon and Gendreau
in front of the residence, with Andy, for	scene for several minutes prior to the	remained with Andy until the
approximately 15 to 20 seconds	paramedics arrival.	paramedics arrived but concedes he lost

thereafter prior to medics arriving,	Supporting Evidence: Exhibit A,	track of them.
260. Karschamroon Decl., ¶¶ 35-36;	Deposition of Mark Zimmerman, pp.	Zimmerman Depo., 264:18-23, 267:12-
" "		_
Gendreau Decl., ¶ 33-34; El-Farra	123: 15-25,246: 7-19, 251: 4, 264: 18-	14, 307:21-25
Decl., ¶ 11-12	25,265: 5-14118-25,267: 6-8.; Defense	
	Exhibit 3, Dispatch CAD.	
261. Officers Gendreau and	261. Disputed: Zimmerman testified	261. Plaintiff's evidence does not
Karschamroon then contacted Andy's	all police officers arrived outside until	constitute a genuine issue of material
family inside the residence, but it	the paramedics arrived looking	fact precluding summary judgment; it is
appeared the only individual who	increasingly more concerned because	immaterial in light of the undisputed
sustained an injury was Plaintiff Bua	Andy was not moving. Per Exhibit 3 of	fact that GG Fire Department
Thi Phan, who had sustained a scraped	Defedants Motion EI-Farra was on	Paramedics were promptly summoned.
elbow. Her injury was measured and	scene at 11:38 and Paramedics did not	In any event, Zimmerman "thinks"
photographed.	arrive until 11:44 so EI-Farra was on	Officers Karschamroon and Gendreau
261. Karschamroon Decl., ¶¶37-38;	scene for minutes prior to the	remained with Andy until the
Gendreau Decl., ¶ 35; Exhibit 4,	paramedics arrival. There has been no	paramedics arrived but concedes he lost
Photograph of Injury; Exhibit 5,	testimony by Karschamroon or	track of them. Further, Plaintiffs do not
Photograph of Screen	Gendreau that they ever personally	deny that Bua Thi Phan was injured in a
	observed any injury nor photographed	struggle with Andy.
	any injury to Bua Phan so there is a	
	complete lack of foundation for this	Zimmerman Depo., 264:18-23, 267:12-
	"new" testimony. Again, another	14, 307:21-25

	example of recreating history by	
	Karschamroon and Gendreau and	
	another reason to disbelieve both of	
	their Declarations. Further, the attached	
	photographs were submitted late and	
	beyond the Motion Cut-Off time.	
	Supporting Evidence: Exhibit A,	
	Deposition of Mark Zimmerman, pp.	
	123: 15-25,246: 7-19, 251: 4,264: 18-	
	25,265: 5-14/18-25,267: 6-8.; Defense	
	Exhibit 3, Dispatch CAD.	
262. An approaching medic was	262. Disputed: Zimmerman testified	262. Plaintiff's evidence does not
informed by Officer El-Farra about the	Andy fell hard to the ground after the	constitute a genuine issue of material
tasing and Andy's labored breathing.	tasering like a "sack of potatoes" and	fact precluding summary judgment; it is
The medic checked for Andy's pulse	saw nothing consistent with Andy	immaterial in light of the undisputed
and informed Officer El-Farra that he	being gently placed on the ground.	fact that GG Fire Department
needed to start CPR. This took Officer	Zimmerman testified Andy was a fat	Paramedics were promptly summoned.
El-Farra completely by surprise. When	guy and the officer could not have	In any event, Zimmerman has had no
he had looked away from Andy to	placed him gently down if they wanted.	medical training, and although his
speak to the medic, Andy had been	Zimmerman testified when Andy hit	eyesight is admittedly impaired, he
breathing. At no time did Officer El-	the ground was dead and never moved	never wears his prescription contact

Farra hear or see Andy stop breathing, or notice any other physical difficulties.

262. El-Farra Decl., ¶ 13-17

again on his own. Zimmerman testified when the police rolled Andy against an officers legs he could clearly see Andy chest and stomach and he was clearly not breathing. Karschamroon testified Gendreau opened up Andy's eyes and Karschamroon could not tell if Andy was breathing. Zimmerman said he saw Gendreau slapping Andy's face and saying "to stop faking". Bua Phan also testified Andy died immediately after tasering.

Dr. Fukumoto testified the evidence is consistent with Andy being dead immediately after he saw tasered.

Dr. Fukumoto also testified that if officers did see labored or heavy breathing they should have known Andy was in cardiad distress and taken off the handcuffs at a minimum.

lens. Zimmerman observed the incident from a distance of approximately 40-50 feet and could not tell what small, detailed movements were occurring. Zimmerman testified that it was possible that Andy was breathing after being tased and that he just did not observe it, and that his belief that Andy was dead is not based on any actual evidence. Dr. Fukumoto testified that he has no way of knowing when Andy died and that he relies on the physician's death pronouncement as to the time of death.

Zimmerman Depo., 22:3-7, 162:11-19, 180:20-21; 201:6-12, 293:23-294:12; Fukumoto Depo., 187:19-188:5, 258:7-259:25

Supporting Evidence: Exhibit A,

	Deposition of Mark Zimmerman,	
	pp.108: 1-11/18-24, 110: 1-13/22-25,	
	111: 10- 17/18-22, 112: 25, 121: 6-	
	11/15-24, 123: 15-25, 240: 21-25, 242:	
	13-25, 243: 11-16, 244: 12-15, 246: 7-	
	19; Exhibit B, Deposition of Daniel	
	Karschamroon, pp. 397: 7-8; Exhibit D,	
	Deposition of Richard Fukumoto,	
	M.D., pp. 90: 13-16, 258: 16-19, 259:	
	2-23, 260: 1-10, 261: 13-15, 264: 21-	
	24, 266: 13-22, 268:6-22, 280: 19-25, 281:	
	10-25, 282: 7-15, 283: 4-16/21-23; Exhibit	
	E, Deposition of Bua Thi Phan, pp.	
	243.1: 16-18; 256.1: 2-5.	
263. After checking the house, the	263. Zimmerman testified Andy fell	263. Plaintiff's evidence does not
Officers Gendreau and Karschamroon	hard to the ground after the tasering	constitute a genuine issue of material
started toward the front door. They	like a "sack of potatoes" and saw	fact precluding summary judgment; it is
could then see the paramedics	nothing consistent with Andy being	immaterial in light of the undisputed
performing CPR on Andy. This was a	gently placed on the ground.	fact that GG Fire Department
"shock" and "surprise" to both officers.	Zimmerman testified Andy was a fat	Paramedics were promptly summoned.
263. Karschamroon Decl., ¶¶39;	guy and the officer could not have	In any event, Zimmerman has had no

Gendreau Decl., ¶ 38

placed him gently down if they wanted. Zimmerman testified when Andy hit the ground was dead and never moved again on his own. Zimmerman testified when the police rolled Andy against an officers legs he could clearly see Andy chest and stomach and he was clearly not breathing. Karschamroon testified Gendreau opened up Andy's eyes and Karschamroon could not tell if Andy was breathing. Zimmerman said he saw Gendreau slapping Andy's face and saying "to stop faking". Bua Phan also testified Andy died immediately after tasering.

Dr. Fukumoto testified the evidence is consistent with Andy being dead immediately after he saw tasered.

Dr. Fukumoto also testified that if officers did see labored or heavy breathing they should have known

medical training, and although his eyesight is admittedly impaired, he never wears his prescription contact lens. Zimmerman observed the incident from a distance of approximately 40-50 feet and could not tell what small, detailed movements were occurring. Zimmerman testified that it was possible that Andy was breathing after being tased and that he just did not observe it, and that his belief that Andy was dead is not based on any actual evidence. Dr. Fukumoto testified that he has no way of knowing when Andy died and that he relies on the physician's death pronouncement as to the time of death.

Zimmerman Depo., 22:3-7, 162:11-19, 180:20-21; 201:6-12, 293:23-294:12; Fukumoto Depo., 187:19-188:5, 258:7-259:25

	Andy was in cardiad distress and taken	
	off the handcuffs at a minimum.	
	Supporting Evidence: Exhibit A,	
	Deposition of Mark Zimmerman,	
	pp.108: 1-11/18-24, 110: 1-13/22-25,	
	111: 10- 17/18-22, 112: 25, 121: 6-	
	11/15-24, 123: 15-25, 240: 21-25, 242:	
	13-25, 243: 11-16, 244: 12-15, 246: 7-	
	19; Exhibit B, Deposition of Daniel	
	Karschamroon, pp. 397: 7-8; Exhibit D,	
	Deposition of Richard Fukumoto,	
	M.D., pp. 90: 13-16, 258: 16-19, 259:	
	2-23, 260: 1-10, 261: 13-15, 264: 21-	
	24, 266: 13-22, 268:6-22, 280: 19-25, 281:	
	10-25, 282: 7-15, 283: 4-16/21-23; Exhibit	
	E, Deposition of Bua Thi Phan, pp.	
	243.1: 16-18; 256.1: 2-5.	
264. Although the paramedics	264. Disputed: Dr. Fukumoto testified	264. Plaintiff's evidence does not
rendered emergency care and	no drug played any role in Andy's	constitute a genuine issue of material
transported to the hospital, Andy Tran	death and none where at fatal levels.	fact precluding summary judgment; it is
did not survive. Toxicology results	He testified Andy died from being	immaterial in light of Andy's actual

revealed substantial levels of	tasered and the evidence was consistent	resistance while being detained, the
Diphenhydramine and	with Andy dying immediatly after	totality of the circumstances
Trihexylphenidyl in his system at the	being hit with the taser. Andy was in	confronting the officers during that
time of death.	full cardiac arrest when the paramedics	detention, and in light of the undisputed
264. Exhibit 6, Toxicology Report	arrived and his eyes were fixed and	fact that GG Fire Department
	dilated. Dr. Fukumoto has been	Paramedics were promptly summoned.
	qualified as an expert in interpreting	In any event, the Plaintiffs' do not
	toxicology results in Courts.	dispute the Defendants' UMF, but Dr.
	Supporting Evidence: Exhibit D,	Fukumoto opinion that the tasering was
	Deposition of Richard Fukumoto,	a factor in Andy's death was because he
	M.D., pp. 63: 1-8, 66: 18-22, 67: 4-5,	already had a bad heart and liver. Dr.
	90: 13-16, 141: 5-25, 142: 6-7, 143: 2-	Fukumoto testified that he has no way
	3, 228: 13-25, 229: 20-25, 239: 10-	of knowing when Andy died and that
	14/19-25, 240: 1-25,243: 1-25, 245:	he relies on the physician's death
	17-25, 260: 1-10, 283: 4-16/21-23,	pronouncement as to the time of death.
	296: 1-7, 304: 1-3/16-18, 305: 8-25,	Fukumoto Depo., 187:19-188:5,
	306: 1-2/10-14, 307: 1-8/22-25, 308: 5-	206:23 - 207:11, 258:7-259:25
	7, 309: 1-5/18-22, 347: 1-4, 355: 2-9.	
265. The Coroner listed the cause of	265. Disputed: Disputed: Dr.	265. Plaintiff's evidence does not
death as "Cardiac arrhythmia during	Fukumoto testified no drug played any	constitute a genuine issue of material
struggle with law enforcement due to	role in Andy's death and none where at	fact precluding summary judgment; it is

dilated hyertropic cardiomyopathy with diphenhydramine and trihexylphenidl intoxication."

265. Exhibit 7, Autopsy Report

fatal levels. He testified Andy died from being tasered and the evidence was consistent with Andy dying immediatly after being hit with the taser. Andy was in full cardiac arrest when the paramedics arrived and his eyes were fixed and dilated. Dr. Fukumoto has been qualified as an expert in interpreting toxicology results in Courts. Dr. Fukumoto testified he wass provided an incorrect history including being told Andy was breathing when paramedicas arrived and was never told exactly what type of struggle Andy was alleged to have been involved in with police. After being provided the true facts, including Dr. Karschamroon's deposition, Dr. Fukumoto concluded Andy died from the tasering. The Defense objected to Dr. Fukumoto reading the Internal

immaterial in light of Andy's actual resistance while being detained, the totality of the circumstances confronting the officers during that detention, and in light of the undisputed fact that GG Fire Department Paramedics were promptly summoned. In any event, the Plaintiffs' do not dispute the Defendants' UMF, but Dr. Fukumoto opinion that the tasering was a factor in Andy's death was because he already had a bad heart and liver. Dr. Fukumoto testified that he has no way of knowing when Andy died and that he relies on the physician's death pronouncement as to the time of death. Fukumoto Depo., 187:19-188:5, 206:23 - 207:11, 258:7-259:25

	Affairs transcripts of Officer Gendreau	
	and Karschamroon even though Dr.	
	Fukumoto thought they could define	
	the facts.	
	Supporting Evidence: Exhibit D,	
	Deposition of Richard Fukumoto,	
	M.D., pp.63: 1-8,66: 18-22,67:4-5,90:	
	13-16, 141: 5-25, 142: 6-7, 143: 2-	
	3,228:13-25, 229: 20-25, 239: 10-	
	14/19-25,240: 1-25,243: 1-25,245: 17-	
	25,260:1-10,283: 4-16/21-23,296: 1-	
	7,304: 1-3/16-18,305: 8-25,306: 1-	
	2/10-14,307:1-8/22-25,308: 5-7,309: 1-	
	5/18-22,347: 1-4,355: 2-9.	
ADJUDICATION NUMBER 10		

PLAINTIFFS' SEVENTH CAUSE OF ACTION FOR NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS FAILS AS A MATTER OF LAW

266. On September 3, 2008, at	266. Disputed: Neither the 911	266. Neither the 911 audio nor the
approximately 11:29 a.m., GGPD	Transcript nor the Dispatch CAD state	CAD dispatch refer to "5150" as
officers Richard Gendreau and Daniel	anything about a "violent, mentally ill	claimed by Plaintiffs, but do refer to

Karschamroon were dispatched to a report of a "violent, mentally ill male" trying to break into the residence, that someone had been assaulted, and that there was an unknown "weapon" involved.

266. Karschamroon Decl., ¶¶ 1-5; Gendreau Decl., ¶¶ 1-5; Exhibit 2, Transcript/Audio 911 Recording; Exhibit 3, Dispatch CAD. male" trying to break into residence nor assaulting anyone. They both say this was a 5150 call and Andy needs to' be taken to a hospital. The 911 caller never said Andy had weapons, the dispatcher made a mistake.

Supporting Evidence: Defense
Exhibit 2, Transcript/Audio 911;
Defense Exhibit 3, Dispatch CD. As will be shown throughout Gendreau's and Karshamroon's Declaration are inconsitent with both their Internal Affairs interviews and Deposition Testimony.

Supporting Evidence: Exhibit C,
Deposition of Gendreau, pp. 305: 5-25;
Exhibit I, Gendreau GGPD Internal
Affairs Interview, pp. 17-18.

[Andy Tran] as being crazy, with weapons, and having committed an assault. Although requests were made to take [Andy] to the hospital, that does not constitute a genuine issue of material fact precluding summary judgment; officer actions are judged as to all information known or relied upon.

Karschamroon Decl., ¶¶ 1-5;
Gendreau Decl., ¶¶ 1-5; Exhibit 2,
Transcript/Audio 911 Recording;
Exhibit 3, Dispatch CAD.

267.. Police Dispatch as well as the CAD printout noted the male subject (Andy Tran) was a "mental case" and "crazy," that he had weapons, and that a crying child could be heard in the background. The reporting party indicated that he was dizzy and he would not answer questions about Andy Tran's location, and kept repeating "send someone right now, send someone right now. Take to hospital." 257. Karschamroon Decl., ¶ 6 Gendreau Decl., \P 6; Exhibit 2, Transcript/Audio 911 recording; Exhibit 3, Dispatch CAD.

267. **Disputed:** Dispatch apparently did not understand 911 call because the 911 caller said nothing about weapons. Dispatch does indicate major languange barrier between 911 caller and dispacth. The CAD printout clearly shows this was a 5150 call and Gendreau testified he was given further information of Andy's prior mental health history. The CAD clearly states Andy needs to be taken to the hospital. **Supporting Evidence:** Exhibit C, Deposition of Gendreau, pp. 305: 5-25; Exhibit I, Gendreau GGPD Internal Affairs Interview, pp. 17-18.

267. Plaintiffs do not dispute Defendants' UMF, but rather argue that police dispatch erroneously concluded that Andy had weapons. This does not constitute a genuine issue of material fact precluding summary judgment; officer actions are judged as to all information known or relied upon, and it remains undisputed that Dispatch relayed information that Andy was crazy, with weapons, and had committed an assault. Further, the Plaintiffs citation to Officer Gendreau's deposition testimony does not support their assertion that he was aware of Andy's mental health history before arriving on scene, but rather only that he did not recall telling Internal Affairs that he acquired such knowledge. In any event, such knowledge would be immaterial in light of Andy's actual

268 Officers Karschamroon and	268. Disputed: Mark Zimmerman	268. The Plaintiff's citation to Mark
Gendreau arrived at approximately	testified he never saw Andy place any	Zimmerman's deposition does not
11:36 a.m., with Karschamroon first to	portion of his body in the window; in	support their assertion. Zimmerman
arrive. He noticed a male individual	fact he testified he began yelling as	testified that Andy stopped "directing

	<u> </u>	
who appeared to be trying to break into	Andy taking off screen and Andy then	his attention towards opening the
or enter the residence through a	turned towards him at the same time	window and getting in the house" after
window, and broken screen nearby. As	Karschamroon arrived.	Officer Karschamroon ordered Andy to
Officer Karschamroon approached him,	Supporting Evidence: Exhibit A,	stop. In any event, this does not
his body halfway into the window and	Deposition of Mark Zimmerman, pp.	constitute a genuine issue of material
he appeared to be trying to grab	51: 9-22, 52: 1-24.	fact precluding summary judgment; it is
something from inside.		immaterial in light of Andy's actual
268. Karschamroon Decl., ¶ 7; Exhibit		resistance while being detained, and the
3, Dispatch CAD.		totality of the circumstances
		confronting the officers during that
		detention.
		Zimmerman Depo., 50:1-19, 52:7-16
269 Officer Karschamroon was aware	269. Disputed: Officer Karschamroon	269. The Plaintiffs do not dispute
through Dispatch the subject's name	testified he called Andy by his name	Officer Karschamroon called Andy by
was Andy Tran, so he called out	Andy and he was uncertain if he	name, only the source of that
"Andy" three to four times to get his	learned Andy's name from hearing Mr.	information. Further, the cited
attention. Andy stopped, slowly turned	Zimmerman saying it or hearing	deposition testimony does not indicate
around, and faced Officer	Andy's name from dispatch.	how many times Officer Karschamroon
Karschamroon. Andy was instructed to	Karschamroon testified Andy	called Andy's name. The remainder of
come down from the porch, which he	responded immediately and never	Defendants' UMF remains
eventually did, approaching Officer	testified he yelled 3-4 times.	unchallenged. In any event, the

Karschamroon with his hands at his	Supporting Evidence: Exhibit B,	Plaintiffs' evidence does not constitute
sides.	Deposition of Daniel Karschamroon,	a genuine issue of material fact
269. Karschamroon Decl., ¶¶ 8-10.	pp. 245:15-25,246: 1-4.	precluding summary judgment; it is
		immaterial in light of Andy's actual
		resistance while being detained, and the
		totality of the circumstances
		confronting the officers during that
		detention.
		Karschamroon Depo., 245:15-25,
		246:1-4
270 Officer Karschamroon could	270. Disputed: Karschamroon	270. Plaintiffs' evidence does not
Andy had a blank stare and appeared to	testified Andy had a confused, puzzled	constitute a genuine issue of material
be confused or unsure of what was	look on his face and appeared in need	fact precluding summary judgment; it is
going on. Andy stopped his approach	of medical help. Karschamroon	immaterial in light of Andy's actual
when he was approximately 20 feet	testified he told Andy to stop when he	resistance while being detained, and the
from the officer, who then asked Andy	was 10-15 feet away and put his hands	totality of the circumstances
to come closer. As Andy slowly	on his head and he complied. He never	confronting the officers during that
approached to within 10 feet of Officer	testified Andy ever stopped before	detention. In any event, the deposition
Karschamroon's location, he was	being told to do so and was told to	testimony of Officer Karschamroon
instructed to stop. Andy stopped, but	come closer.	cited by Plaintiffs is consistent with
maintained his blank expression.	Supporting Evidence: Exhibit B,	Defendants' UMF, namely, that Andy

270. Karschamroon Decl., ¶¶ 11, 12	Deposition of Daniel Karschamroon,	was instructed to stop either "10 feet"
	pp. 244: 15-25, 259: 1-7, 257: 15-22,	or "10-15 feet" from Officer
	276: 19-25, 279: 14-16; Exhibit J,	Karschamroon's location. The cited
	Karschamroon GGPD Internal Affairs	deposition testimony does not include a
	Interview, pp. 5-6.	question whether Andy stopped at any
		time prior to being so instructed, and
		would be an immaterial variance
		regardless.
271 Andy was instructed to put his	271. Undisputed	271. Undisputed.
hands on top of his head and turn		
around, and he slowly complied with		
the directive. Officer Karschamroon		
then approached Andy and told him to		
interlock his fingers, which he did.		
Andy never spoke, but did appear to		
understand what was being said. 271.		
Karschamroon Decl., ¶¶ 13, 14		
272. Grabbing Andy's hands, Officer	272. Disputed: Neither the 911	272. Plaintiffs' evidence does not
Karschamroon sought to reassure him	Transcript nor the Dispatch CAD state	dispute that Officer Karschamroon
by saying "there's nothing wrong,"	anything about a "violent, mentally ill	attempted to calm and relax Andy, nor
"we're just here to help you," and to	male" trying to break into residence nor	the nature of the call received by

assaulting anyone. They both say this	Dispatch. Neither the 911 audio nor the
was a 5150 call and Andy needs to be	CAD dispatch refer to "5150" as
taken to a hospital. The 911 caller	claimed by Plaintiffs, but do refer to
never said Andy had weapons, the	[Andy Tran] as being crazy, with
dispatcher made a mistake. Given most	weapons, and having committed an
of Karschamroon's Declaration is	assault. Although requests were made
vastly different than his Internal Affairs	to take [Andy] to the hospital, that does
Interview and Deposition Testimony	not constitute a genuine issue of
anything he says he did is subject to	material fact precluding summary
impeachment now for prior inconsitent	judgment; officer actions are judged as
statements, thereby everything in his	to all information known or relied
Declaration should be viewed with	upon.
Suspicion.	Karschamroon Decl., $\P\P$ 1-5;
Supporting Evidence: Defense	Gendreau Decl., $\P\P$ 1-5; Exhibit 2,
Exhibit 2, Transcript/Audio 911;	Transcript/Audio 911 Recording;
Defense Exhibit 3, Dispatch CAD.	Exhibit 3, Dispatch CAD.
273 Disputed: Officer Karschamroon	273. Plaintiffs argue semantics but do
never told Internal Affairs Andy's	not dispute any material fact. Officer
hands ever balled into fists and he	Karschamroon testified at his
testified repeatedly that Andy's hands	deposition that when a handcuff was
always remained interlocked after he	placed on Andy's right wrist, Andy
	was a 5150 call and Andy needs to be taken to a hospital. The 911 caller never said Andy had weapons, the dispatcher made a mistake. Given most of Karschamroon's Declaration is vastly different than his Internal Affairs Interview and Deposition Testimony anything he says he did is subject to impeachment now for prior inconsitent statements, thereby everything in his Declaration should be viewed with Suspicion. Supporting Evidence: Defense Exhibit 2, Transcript/Audio 911; Defense Exhibit 3, Dispatch CAD. 273 Disputed: Officer Karschamroon never told Internal Affairs Andy's hands ever balled into fists and he testified repeatedly that Andy's hands

separate Andy's now-clenched fists.	was told to do so and he never saw	"tensed" and Officer Karschamroon
273. Karschamroon Decl., ¶ 15	Andy's hands ball into fists.	"could feel his fingers closing, kind of
	Karschamroon further testified he did	curling up from that interlocked
	not know whether Andy's tension was a	position" and "close up as if the fingers
	result of his attempt to follow the last	were curling." Officer Karschamroon
	command given to interlock his fingers.	also stated in his deposition that Andy
	He also testified Andy was never	was "actively resisting" and that he
	aggressive.	"thought it might turn violent."
	Supporting Evidence: Exhibit J,	Karschamroon Depo., 321:22-322:22,
	Karschamroon GGPD Internal Affairs	362:12-17, 366:14-19
	Interview, pp. 7-8; Exhibit B,	
	Deposition of Daniel Karschamroon,	
	pp. 261: 12-18, 264: 17-20, 265: 13-18,	
	268: 9-10, 270: 10-11, 281: 9-25, 284:	
	1-25, 285: 1-6.	
274. Officer Gendreau noticed the	274. Disputed: Officer Gendreau said	274. Plaintiffs do not dispute any
struggle to get Andy's arms behind his	he walked fast and did not run. Officer	material fact, argue semantics, and
back, so he immediately ran over to	Karschamroon testified he never	mischaracterize testimony. Mark
assist. Officer Gendreau was told that	struggled with Andy is Gendreau's	Zimmerman confirmed that Officer
one handcuff was secured, but that	presence nor tried to force Andy's	Gendreau approached at "a pretty fast
Andy was not allowing himself to be	hands behind his back. Karschamroon	pace." Officer Gendreau testified that

cuffed. Officer Karschamroon had a concern that the encounter might turn violent due to Andy's reaction when the first handcuff was placed on his wrist.

274. Karschamroon Decl., ¶¶ 16, 17;

Gendreau Decl., ¶¶ 7, 8

never said Andy would not allow self to be handcuff and said he told Gendreau Andy was complying but hands tensed when placed first handcuff on. Also Karschamroon and Zimmerman disagree with most of what Gendreau said occured and both Gendreau and Karschamroon have now filed Declarations which are filed with inconsistent statements from their Internal Affairs Interviews and Deposition Testimony their Declarations should be viewed with suspicion.

Supporting Evidence: Exhibit C,
Deposition of Richard Gendreau, pp.
175: 1-25, 176: 1-25, 177: 1-5, 206:
19-25; Exhibit B, Deposition of Daniel
Karschamroon, pp. 285: 11-13;
Karschamroon GGPD Internal Affairs
Interview, pp. 9.

Officer Karschamroon told him that Andy was tensed up and that he couldn't get Andy's hands behind his back into a handcuffing position. This is consistent with Officer Karschamroon's testimony that he told Gendreau that Andy was complying and tensed up after one handcuff was secured. Nothing in the cited testimony disputes that Andy continued to resist after Gendreau arrived. Further, Mark Zimmerman testified that Officer Gendreau did assist Officer Karschamroon by putting "his hands on Andy's hands or on the other officer's hands or in that vicinity" for "about 20 seconds" in what appeared to him as an effort to "keep more control" of Andy. Zimmerman Depo., 92:19-25, 93:16-19, 209:7-22; Gendreau Depo., 175:20-24; Karschamroon Depo.,

275. Andy continued to resist, failed to obey commands, and did not speak. Officer Gendreau could see that Andy's method of resistance was "complete rigidity"; both of his arms were up, his fists were balled, and he was shaking. Despite Officer Karschamroon's best efforts to pull Andy's arms down behind his back, his arms would not move.

275. Karschamroon Decl., ¶ 16 Gendreau Decl., ¶ 9 275. **Disputed:** Officer Karschamroon had full control of Andy and there was never a struggle between the two. Officer Karschamroon testified he never struggled with Andy is Gendreau's presence nor tried to force Andy's hands behind his back. Karschamroon never said Andy would not allow self to be handcuff and said he told Gendreau Andy was complying but hands tensed when placed first handcuff on. Also given Karschamroon and Zimmennan disagree with most of what Gendreau said occured and both Gendreau and Karschamroon have now filed Declarations which are filed with inconsistent statements from their Internal Affairs Interviews and Deposition Testimony their Declarations should be viewed with

285:11-14.

275. Plaintiffs' evidence does not dispute any material fact, and does not indicate that Officer Karschamroon had full control of Andy or that there was no resistance. Plaintiffs ignore Officer Karschamroon testimony that when a handcuff was placed on Andy's right wrist, Andy "tensed" and Officer Karschamroon "could feel his fingers closing, kind of curling up from that interlocked position" and "close up as if the fingers were curling." Officer Karschamroon also stated in his deposition that Andy was "actively resisting" by not allowing his arms to be pulled apart and providing tension to pull his arms together, and that he "thought it might turn violent." Nothing in Plaintiffs' cited testimony disputes that Andy continued to resist

	suspicion.	after Gendreau arrived. Further, Mark
	Supporting Evidence: Exhibit C,	Zimmerman testified that Officer
	Deposition of Richard Gendreau, pp.	Gendreau did assist Officer
	175: 1-25, 176: 1-25, 177: 1-5,206: 19-	Karschamroon by putting "his hands on
	25; Exhibit B, Deposition of Daniel	Andy's hands or on the other officer's
	Karschamroon, pp. 285: 11-13;	hands or in that vicinity" for "about 20
	Karschamroon GGPD Internal Affairs	seconds" in what appeared to him as an
	Interview, pp. 9.	effort to "keep more control" of Andy.
		Karschamroon Depo., 321:22-322:22,
		280:12-23, 362:12-17, 366:14-19,
		Zimmerman Depo., 92:19-25, 93:16-
		19, 209:7-22
276 To prevent a possible escape,	276. Disputed: Officer Karschamroon	276. Plaintiffs do not dispute any
Officer Gendreau moved in front of	testified he was a foot from Andy and	material fact precluding summary
Andy. From that position, he could see	1-3 feet from Gendreau and He never	judgment. The assertion that Andy did
that Andy was shaking and he began to	heard Andy growl or see his foaming at	not try to escape does dispute Officer
growl. Andy was not blinking, his	the mouth, or see Andy shaking other	Gendreau's motivation for positioning
pupils appeared to be dilated, and he	than when Karschamroon shook Andy	himself in front of Andy. Further,
had saliva coming from the corner of	hands, which moved, to let Andy know	Officer Karschamroon was positioned
his mouth, almost as though he was	he was still behind him. Gendreau	behind Andy, and was not in a position
foaming at the mouth. Officer	testified he never feared Andy would	to see Andy's face at the time he was

Gendreau felt like Andy was looking	flee or run. Karschamroon testified	tased. As to the issue of Andy
straight through him.	Andy never made a movement	growling, Mark Zimmerman testified
276. Karschamroon Decl., ¶ 16	consisting with fleeing or running away	that although he never saw Andy's lips
Gendreau Decl., $\P\P$ 10, 11	Supporting Evidence: Exhibit B,	moving, he heard some audible things
	Deposition of Daniel Karschamroon,	coming out of his mouth. Zimmerman
	pp. 261: 12-18, 264: 17-20, 284: 1-25,	also testified that he could see subtle
	285: 1-6, 330: 11-15; Declaration of	movement going on between the
	Daniel Karschamroon, pp. 384: 18,	officers and Andy and that there could
	385: 1-5; Exhibit C, Deposition of	have been a "whole 'nother [sic] set of
	Richard Gendreau, pp. 174: 14-17;	scenarios going on" that he did not see.
	176: 1-25, 177: 1-10,182: 2-23,187: 1-	Karschamroon Depo., 348:9-15,
	8,220: 1-24, 225: 17-24, 266: 1-10.	355:16-19, Zimmerman Depo., 217:3-
		9, 222:11-223:13, 276:22-25
277. In a casual manner, Officer	277. Disputed: Officer Karschamroon	277. Plaintiffs do not dispute
Gendreau said words to the effect of,	testified the only thing he heard	Defendants' UMF that the officers
"Hey, dude, just calm down," and	Gendreau say was "Hey, dude, calm	attempted to relax and calm Andy while
advised Andy to relax, put his hands	down." Gendreau never ackowledged	attempting to secure him, but rather
behind his back, and that "we're not	he said "dude calm down".	dispute the exact words spoken. This
here to hurt you." Officer	Karschamrron testified Gendreau never	does not create a genuine issue of
Karschamroon was reminding Andy to	told Andy to put his hands behind his	material fact precluding summary

relax as well, but he was also shaking	back and the only shaking he saw from	judgment. Further, it is immaterial that
Andy's still clenched hands to let him	Andy was Karschamroon shaking	Officer Karschamroon may not have
know he still needed to be handcuffed.	Andy to let him know he was there.	said anything to Andy about being
277. Karschamroon Decl., $\P\P$ 19, 20;	Karschamroon testifed he never said	handcuffed since the act of attempting
Gendreau Decl., $\P\P$ 12, 13	anything to Andy about being	to handcuff him established the
	handcuffed.	officer's intention. Officer
	Supporting Evidence: Exhibit B,	Karschamroon's deposition testimony
	Deposition of Daniel Karschamroon,	that Andy was not allowing his arms to
	pp. 282, 345: 1-18, 268: 19-23, 269: 1-	be pulled apart and was providing
	4; 419, Exhibit B, Deposition of Daniel	tension to pull his arms together
	Karschamroon, pp. 328: 1-7,330: 11-	demonstrates resistance to that
	15/17-25, 337: 10-16, 340: 8-9, 341: 7-	intention.
	16.	Karschamroon Depo., 321:22-322:22,
		280:12-23, 362:12-17, 366:14-19
278. Andy continued to ignore the	278. Disputed: Gendreau said he did	278. Plaintiffs do not dispute any
officers' orders, and concern grew that	not believe Andy understood anything	material fact precluding summary
the dangling handcuff could be used as	he said so how can he claim Andy	judgment and mischaracterize
a weapon if Andy decided to swing his	ignored an order? Further,	testimony. Officer Karschamroon did
arm. Both officers then attempted to	Karschamroon testified that neither	not testify that "relax" and "calm
pry Andy's arms down but could not	"relax" or "dude calm down" were	down" were not lawful orders.
overcome his flexed/locked position. A	lawful orders. Both Karshamroon and	Although he did testify he had not

pain compliance technique performed by Officer Gendreau did nothing. 278. Karschamroon Decl., ¶¶ 21, 22; Gendreau Decl., ¶¶ 12, 14-16 Zimmennan said Gendreau never struggled with Andy except to taser him. Karschamroon testified repeatedly he never saw Gendreau touch Andy and did not struggle either alone or with Gendreau to get Andy's ann behind his back.

Karschamroon testified he always had ahold of the loose handcuff so it could not be dangling and used as a weapon. Again, given the many new statements which are completely inconsitent with statements made to Internal Affairs and during Deposition testimony puts the credibilty of Karschamroon and Gendreau is great doubt and their Declarations should be viewed with extreme caution.

Supporting Evidence: Exhibit B,
Deposition of Daniel Karschamroon,
pp. 273: 8-11, 274, 292: 17-23, 293: 1,

received training that such commands were lawful orders, he stated that the commands given were appropriate given the goal of relaxing Andy. Officer Karschamroon also stated in his deposition that Andy was "actively resisting" by not allowing his arms to be pulled apart and providing tension to pull his arms together, and that he "thought it might turn violent." Nothing in Plaintiffs' cited testimony disputes that Andy continued to resist after Gendreau arrived. Further, Mark Zimmerman testified that Officer Gendreau did assist Officer Karschamroon by putting "his hands on Andy's hands or on the other officer's hands or in that vicinity" for "about 20 seconds" in what appeared to him as an effort to "keep more control" of Andy. Nothing in Zimmerman's testimony

331: 16-25, 332: 18-21, 333: 7-11; Karschamroon GGPD Internal Affairs Interview, pp. 7-8.; Exhibit A, Deposition of Mark Zimmerman, pp. 79:11-20,80: 10-16, 81: 4-5, 83: 18-25, 85:1-10,87: 3-7/16-23,97: 5-6, 100: 1-25, 102: 4-9/20-24,150: 20-25, 151: 9-11, 197:20-25,198: 1-5,209:23-25,222: 17-25,224: 6-12, 276: 10-20,277: 1-4, 278: 18-21.

disputes the officers' account of Andy's resistance other than his own speculation. Zimmerman testified that he could see subtle movement going on between the officers and Andy and that there could have been a "whole 'nother [sic] set of scenarios going on" that he did not see. He could not hear what was being said, and although his eyesight is admittedly impaired, he never wears his prescription contact lens. Zimmerman observed the incident from a distance of approximately 40-50 feet could not tell what small, detailed movements were occurring. He does not know whether the officers tried to move Andy's hands from the top of his head, and admits that many things could have been said or done which he could not observe or hear. While Zimmerman testified that

		Andy's hands were on his head at all
		times, he cannot say whether there was
		any kind of struggle
		Karschamroon Depo., 321:22-322:22,
		280:12-23, 283:20-284:20, 362:12-17,
		366:14-19, Zimmerman Depo., 22:3-7,
		82:11-18, 92:19-25, 93:16-19, 96:2-10,
		100:7-20, 162:11-19, 187:3-11,
		200:11-24, 201:6-12, 209:7-22, 217:3-
		9, 222:11-223:13, 276:22-25, 287:25-
		288:12.
279. Officer Gendreau thought that if a	279. Disputed: Karschamroon and	279. Plaintiffs' evidence does not
fight ensued, it was going to be a bad	Zimmerman both testified Gendreau	dispute any material fact. Plaintiffs
one given the strength that Andy had	never struggled to force Andy's hands	ignore Officer Karschamroon's
exhibited when resisting both officers	behind back. Karschamroon said	testimony that when a handcuff was
attempt to lower his arms. Officer	Gendreau never touched Andy.	placed on Andy's right wrist, Andy
Karschamroon was similarly concerned	Karschamroon testified when he shook	"tensed" and Officer Karschamroon
about officer safety.	Andy's hands they moved so the	"could feel his fingers closing, kind of
279. Karschamroon Decl., ¶ 21;	extraordinary strength Gendreau said	curling up from that interlocked
Gendreau Decl., ¶ 19	Andy had is disputed by	position" and "close up as if the fingers
	Karschamroon.	were curling." Officer Karschamroon

Supporting Evidence: Exhibit B,
Deposition of Daniel Karschamroon,
pp.273: 8-11,274, 292: 17-23, 293: 1,
331: 16-25, 332: 18-21, 333: 7-11;
Karschamroon GGPD Internal Affairs
Interview, pp. 7-8.; Exhibit A,
Deposition of Mark Zimmerman,
pp.79: 11-20, 80: 10-16, 81:4-5, 83:
18-25, 85: 1-10, 87: 3-7/16-23, 97: 5-6,
100: 1-25, 102: 4-9/20-24, 150: 20-25,
151: 9-11, 197:20-25, 198: 1-5, 209
:23-25, 222: 17-25, 224: 6-12, 276: 1020, 277: 1-4, 278: 18-21.

also stated in his deposition that Andy was "actively resisting" by not allowing his arms to be pulled apart and providing tension to pull his arms together, and that he "thought it might turn violent." Nothing in Plaintiffs' cited testimony disputes that Andy continued to resist after Gendreau arrived. Further, Mark Zimmerman testified that Officer Gendreau did assist Officer Karschamroon by putting "his hands on Andy's hands or on the other officer's hands or in that vicinity" for "about 20 seconds" in what appeared to him as an effort to "keep more control" of Andy. Nothing in Zimmerman's testimony disputes the officers' account of Andy's resistance other than his own speculation. Karschamroon Depo., 321:22-322:22, 280:12-23, 362:12-17, 366:14-19,

		Zimmerman Depo., 22:3-7, 82:11-18,
		92:19-25, 93:16-19, 96:2-10, 100:7-20,
		162:11-19, 187:3-11, 200:11-24,
		201:6-12, 209:7-22, 217:3-9, 222:11-
		223:13, 276:22-25, 287:25-288:12.
280. As Andy continued to resist	280. Disputed: Karschamroon	280. Plaintiffs do not dispute any
officer commands by remaining rigid	testified after he told Andy to interlock	material fact precluding summary
and non-responsive, Officer Gendreau	his fingers Andy was only told to relax	judgment and mischaracterize
decided to take out his Taser. Andy	or "dude calm down" which	testimony. Officer Karschamroon
was informed several times that if he	Karschamroon testified were not lawful	testified that Officer Gendreau did warn
did not comply, he would be tased.	orders. Gendreau testified he did pot	Andy that he would be tased if he did
Andy continued to resist, so Officer	believe Andy understood anything he	not calm down, and Zimmerman
Gendreau deployed his taser once in	said so it would be difficult for him to	testified that Officer Gendreau had his
Andy's thigh for a cycle of five	"resist" non lawful "commands".	hands on top of Andy's hands for about
seconds.	Karschamroon testified Gendreau told	20 seconds before stepping to the side
280. Karschamroon Decl., $\P\P$ 22-25;	him "Danny I'm just going to Tase	to taser him.
Gendreau Decl., $\P\P$ 20-23	him" and Karschamroom testified	Karschamroon Depo., 331:6-12,
	Gendreau never told Andy he was	Zimmerman Depo., 208:8-209:17
	going to be tasered. Zimmerman said	
	Gendreau stepped to Andy's side and	
	immediatly tasered him.	

	Supporting Evidence: Exhibit A,	
	Deposition of Mark Zimmerman, pp.	
	108: 1-11/18-24, 110: 1-13/22-25, 111:	
	10-17/18-22, 112: 25, 121: 6-11/15-24,	
	123: 15-25, 240: 21-25, 242: 13-25,	
	243: 11-16, 244: 12-15, 246: 7-19;	
	Exhibit B, Deposition of Daniel	
	Karschamroon, pp. 397: 7-8; Exhibit D,	
	Deposition of Richard Fukumoto,	
	M.D., pp. 90: 13-16, 258: 16-19, 259:	
	2-23, 260: 1-10, 261: 13-15, 264: 21-	
	24, 266: 13-22, 268:6-22, 280: 19-25,	
	281: 10-25, 282: 7-15, 283: 4-16/21-	
	23; Exhibit E, Deposition of Bua Thi	
	Phan, pp. 243.1: 16-18; 256.1: 2-5.	
281. Prior to deploying the taser,	281. Disputed: GGPD General Order	281. Plaintiffs do not dispute any
Officer Gendreau also attempted to	5.31 states the IVS Unit must be	material fact precluding summary
activate his audio recording system and	activated when a detention was going	judgment. The General Orders are
the one in his police unit, although he	to occur. Gendreau testified he saw	simply "guidelines," and the purpose of
was too far away for remote avtivation.	Karschamroon detaining Andy when he	the In-Car Video System (IVS) is to
Based on the nature of the call and	arrived yet failed to activate his IVS	provide an accurate, unbiased

rapidly evolving events, activating a recorder or his in-unit video during this incident was "not at the forefront" of Officer Karschamroon's thoughts.

281. Karschamroon Decl., ¶ 41;

Gendreau Decl., ¶ 20

Unit; Karschamroon testified he thought IVS Unit activation was completely within his discretion. No where in the GGPD General Orders does it indicate "rapidly evolving events" warrant ignoring orders. The fact Gendreau claims to have attempted to activate his IVS Unit shows he had time and should have called for a supervisor and medics before tasering Andy as required by GGPD General Order 2.25. Further, given the major credibility issues of all involved officers Plaintiffs do not believe the Court should not accept the IVS recordings were destroyed. GGPD General Order 5.31 states if IVS fails to activate a work order must be completed and Gendreau never did the required paperwwork.

audiovisual record of enforcement related and non-criminal incidents that will enhance criminal prosecutions and limit civil liabilities. The policy is nonpunitive in nature, and no disciplinary action for violations of this policy will be proposed unless the employee refuses either actively or passively, as demonstrated by repeated instances of his/her failure. Summoning Fire Department Paramedics before the use of a Taser is only recommended, if practical, under the circumstances. General Order 2.24, 5.31, General Order, "Statement by the Chief of Police"

Supporting Evidence: Exhibit C,

	Deposition of Richard Gendreau, pp.	
	97-98, 109: 20-23; Exhibit H, GGPD	
	General Order 2.24, 5.31.	
282. Officer Gendreau was trained that	282. Disputed: Gendreau testified he	282. Plaintiff's evidence does not
one of the best ways to get a subject on	believed that Andy was under the	constitute a genuine issue of material
the ground is to tase them in the leg.	influence of a Central Nervous System	fact precluding summary judgment; it is
His goal was to take Andy into custody	stimulant before he tasered Andy and	immaterial in light of Andy's actual
without any further risk of injury to	knew and had been trained that tasering	resistance while being detained, and the
Andy, Officer Karschamroon or	Andy could cause his immediate death.	totality of the circumstances
himself.	Given theses facts it is difficult to	confronting the officers during that
282. Gendreau Decl., ¶ 22	believe Gendreau did not believe to	detention. Officer Karschamroon
	injure Andy. Further, GGPD General	testified that he did not feel it was
	Orders state a medic and supervisor	necessary to take out any weapon only
	should be called prior to tasering a	up to the point of placing the first
	subject. Gendreau testified he tried to	handcuff on Andy's wrist. Officer
	activate his IVS and Lux testified it	Gendreau testified that Andy's conduct
	would have take 1-3 seconds to call for	and appearance was indicative of
	a medic and supervisor. Gendreau said	someone who potentially is going to
	Andy was not resisting, being	throw a punch. Plaintiffs' misrepresent
	aggressive or looking like would flee	the testimony of Benedict Lux, which
	when he wass tasered so there was no	was based on incomplete hypothetical

rush to taser Andy. Andy was therefore a non comabative subject per GGPD General Order 2.6 and Lux testified he trained his students including Gendreau not taser such subjects.

Karschamroon testified he saw no reason to take out any weapons against Andy and had no idea why Gendreau was tasering Andy. Lux testified Karshamroon as the first officer on scene should have detennined why Gendreau was going to taser Andy.

Supporting Evidence: Exhibit B,

pp. 251: 17-25, 252: 1-118, 355: 21-24,

Deposition of Daniel Karschamroon,

357: 3-18, 360: 1-6; Exhibit C,

Deposition of Richard Gendreau, pp.

96: 1-16,174: 14-17; 176: 1-25, 177: 1-

10, 182: 2-23, 187: 1-8, 220: 1-24, 225:

17-24, 266: 1-10, 327: 17-22, 328: 1-

14/20-25, 329: 1-18; Exhibit F,

questioning and not on facts relevant to this case.

Karschamroon Depo., 251:21-252:6, Gendreau Depo., 178:5-16.

	Deposition of Benedict Lux, pp. 176:	
	15-22,177:7-20,178:5-14,179: 5-12,	
	204: 1-25, 205: 1-15, 206: 9-22, 209:	
	1-25, 210: 8-18, 211: 9-11, 212: 13-18,	
	244: 14-25, 247: 21-25, 252: 21-25, pp.	
	253: 1-3/5-12, 254, 255: 1-5/12-15;	
	Exhibit H, GGPD General Order 2.24,	
	2.6; Exhibit J, Karschamroon GGPD	
	Internal Affairs Interview, pp. 15.	
283. Once Andy was tased, he began to	283. Disputed: Zimmerman testified	283. Plaintiff's evidence does not
fall backward toward Officer	Andy fell hard to the ground after the	constitute a genuine issue of material
Karschamroon, who caught him and	tasering like a "sack of potatoes" and	fact precluding summary judgment; it is
laid him forward onto the ground.	saw nothing consistent with Andy	immaterial in light of Andy's actual
Andy also released his grip, and once	being gently placed on the ground.	resistance while being detained, and the
the taser cycle stopped, the officers	Zimmeman testified Andy was a fat	totality of the circumstances
were able to bring his left arm behind	guy and the officers could not have	confronting the officers during that
his back and apply the other handcuff to	placed him gently down if they wanted.	detention. Zimmerman has had no
secure his arms.	Zimmerman testified when Andy hit	medical training. Although his eyesight
283. Karschamroon Decl., ¶ 26;	the ground was dead and never moved	is admittedly impaired, he never wears
Gendreau Decl., $\P\P$ 24, 25	again on his own.	his prescription contact lens.
	Supporting Evidence: Exhibit A,	Zimmerman observed the incident from

	Deposition of Mark Zimmerman, pp.	a distance of approximately 40-50 feet
	108: 1-11/18-24, 110: 1-13, 240: 21-	and could not tell what small, detailed
	25, 242: 13-25,243: 11-16.	movements were occurring.
		Zimmerman testified that it was
		possible that Andy was breathing after
		being tased and that he just did not
		observe it, and that his belief that Andy
		was dead is not based on any actual
		evidence
		Zimmerman Depo.,pp. 22:3-7, 162:11-
		19, 180:20-21; 201:6-12, 293:23-
		294:12
284. At approximately 11:38 a.m.,	284. Disputed: GG Fire Department	284. Plaintiff's evidence does not
Officer Gendreau advised over his	paramedics were not dispached until	constitute a genuine issue of material
police radio that the situation was	11:39:38. Per Lux and GGPD General	fact precluding summary judgment; it
stable, but that Andy had been tased and	Order 2.24 states medics should be	remains undisputed that GG Fire
he requested Garden Grove Fire	called before any tasering and a	Department paramedics were promptly
Department to respond to examine	supervisor must be called before a	dispatched after Andy was tased.
Andy per their protocol when a subject	tasering. Sergeant Wagner was not	General Orders are guidelines and not
is tased. At approximately 11:39 a.m.,	requested until 11:46.	an independent mechanism to pursue
Garden Grove Fire Department was	Supporting Evidence: Exhibit D,	civil liability.

dispatched to the incident scene in	Deposition of Richard Fukumoto,	General Orders, "Statement by the
reference to Andy being tased.	M.D., pp. 90: 13-16, 282: 7-15, 283:4-	Police Chief"
284. Karschamroon Decl., ¶ 27;	16/21-23; Exhibit F, Deposition of	
Gendreau Decl., ¶ 26; Exhibit 3	Benedict Lux, pp. 249: 15-25, 250: 9-	
Dispatch CAD	10, 260: 13-25, 262: 15-25, 263: 1-3;	
	Exhibit H, GGPD General Order 2.24;	
	Exhibit K., Sergeant Wagner's report.	
285. As he was handcuffed and on the	285. Disputed: Zimmerman testified	285. Plaintiff's evidence does not
ground, Andy looked in various	Andy fell hard to the ground after the	constitute a genuine issue of material
directions. Officer Gendreau continued	tasering like a "sack of potatoes" and	fact precluding summary judgment; it is
to instruct him to relax, and informed	saw nothing consistent with Andy	immaterial in light of the undisputed
him they were in the process of getting	being gently placed on the ground.	fact that GG Fire Department
him medical attention. When asked if	Zimmeman testified Andy was a fat	Paramedics were promptly summoned.
he was doing okay, Andy remained	guy and the officers could not have	In any event, Zimmerman has had no
unresponsive but continued to look	placed him gently down if they wanted.	medical training, and although his
around.	Zimmerman testified when Andy hit	eyesight is admittedly impaired, he
285. Karschamroon Decl., ¶ 30;	the ground was dead and never moved	never wears his prescription contact
Gendreau Decl., ¶ 27	again on his own. Karschamroon	lens. Zimmerman observed the
	testifed Gendreau opened up Andy's	incident from a distance of
	eyes and Karschamroon could not tell	approximately 40-50 feet and could not
	if Andy was breathing. Zimmerman	tell what small, detailed movements

said he saw Gendreau slapping Andy's face and saying "to stop faking". Bua Phan also testified Andy died immediately after the tasering. Dr. Fukumoto testified the evidence is consistent with Andy being dead immediately after he saw tasered. Supporting Evidence: Exhibit A, Deposition of Mark Zimmerman, pp. 108: 1-11/18-24, 110: 1-13/22-25, 111: 10-17/18-22, 112: 25, 121: 6-11/15-24,123: 15,- 25, 240: 21-25, 242: 13-25, 243: 11-16,244: 12-15,246: 7-19; Exhibit B, Deposition of Daniel Karschamroon, pp. 397: 7-8; Exhibit D, Deposition of Richard Fukumoto, M.D., pp. 90: 13-16, 258: 16-19, 259:2-23, 260: 1-10, 261: 13-15, 264: 21-24, 266: 13-22, 268:6-22, 280: 19-25, 281: 10-25, 282: 7-15, 283: 4-16/21-23; Exhibit E, Deposition of Bua Thi Phan,

were occurring. Zimmerman testified that it was possible that Andy was breathing after being tased and that he just did not observe it, and that his belief that Andy was dead is not based on any actual evidence. Dr. Fukumoto testified that he has no way of knowing when Andy died and that he relies on the physician's death pronouncement as to the time of death.

Zimmerman Depo., 22:3-7, 162:11-19, 180:20-21; 201:6-12, 293:23-294:12; Fukumoto Depo., 187:19-188:5, 258:7-259:25

286. After the tasing, a third officer arrived on scene, Officer Amir El-Farra. The officers decided to roll Andy over on his back to observe him from the front. His eyes were closed, but a check by Officer Gendreau found they were dilated. Because of that and Andy's labored breathing, the officers decided to sit him up against Officer El-Farra's leg, thinking it might help with his breathing and help snap him out of the trance he appeared to be in. 286. Karschamroon Decl., $\P\P$ 29-34; Gendreau Decl., ¶¶ 31-32; El-Farra *Decl.*, $\P 96-8$

pp. 243.1: 16-18; 256.1: 2-5. 286. Disputed: Zimmerman testified Andy fell hard to the ground after the tasering like a "sack of potatoes" and saw, nothing consistent with Andy being gently placed on the ground. Zimmeman testified Andy was a fat guy and the officers could not have placed him gently down if they wanted. Zimmerman testified when Andy hit the ground was dead and never moved again on his own. Zimmerman testified when the police rolled Andy against an officers legs he could clearly see Andy chest and stomach and he was clearly not breathing. Karschamroon testifed Gendreau opened up Andy's eyes and Karschamroon could not tell if Andy was breathing. Zimmerman said he saw Gendreau slapping Andy's face and saying "to stop faking". Bua Phan also

286. Plaintiff's evidence does not constitute a genuine issue of material fact precluding summary judgment; it is immaterial in light of the undisputed fact that GG Fire Department Paramedics were promptly summoned. In any event, Zimmerman has had no medical training, and although his eyesight is admittedly impaired, he never wears his prescription contact lens. Zimmerman observed the incident from a distance of approximately 40-50 feet and could not tell what small, detailed movements were occurring. Zimmerman testified that it was possible that Andy was breathing after being tased and that he just did not observe it, and that his belief that Andy was dead is not based on any actual evidence. Dr. Fukumoto

	testified Andy died immediately after	testified that he has no way of knowing
	the tasering.	when Andy died and that he relies on
	Dr. Fukumoto testified the evidence is	the physician's death pronouncement as
	consistent with Andy being dead	to the time of death.
	immediately after he saw tasered.	Zimmerman Depo., 22:3-7, 162:11-19,
	Supporting Evidence: Exhibit A,	180:20-21; 201:6-12, 293:23-294:12;
	Deposition of Mark Zimmennan, pp.	Fukumoto Depo., 187:19-188:5,
	108: 1-11/18-24, 110: 1-13/22-25, 111:	258:7-259:25
	10-17/18-22,112: 25, 121: 6-11/15-24,	
	123: 15-25; 240: 21-25; 242: 13-25,	
	243: 11-16, 244: 12-15, 246: 7-19;	
	Exhibit B, Deposition of Daniel	
	Karschamroon, pp. 397: 7-8; Exhibit D,	
	Deposition of Richard Fukumoto,	
	M.D., pp. 90: 13-16, 258: 16-19, 259:	
	2-23, 260: 1-10, 261: 13-15, 264: 21-	
	24,266: 13-22, 268:6-22, 280: 19-25,	
	281: 10-25, 282: 7-15, 283: 4-16/21-	
	23; Exhibit E, Deposition of Bua Thi	
	Phan, pp. 243.1: 16-18; 256.1: 2-5.	
287. Given Andy's dilated pupils in	287. Disputed: Gendreau testified he	287. 287. Plaintiff's evidence does not

bright sunlight and his rapid pulse,
Officer Gendreau did consider that he
may be under the influence of a
controlled substance, but he never had
the opportunity to do a full evaluation.
287. Gendreau Decl., ¶ 37

believed that Andy was under the influence of a Central Nervous System stimulant before he tasered Andy and knew and had been trained that tasering Andy could cause his immediate death. Given theses facts it is difficult to believe Gendreau did not believe to injure Andy. Further, GGPD General Orders state a medic and supervisor should be called prior to tasering a subject. Gendreau testified he tried to activate his IVS and Lux testified it would have take 1-3 seconds to call for a medic and supervisor. Gendreau said Andy was not resisting, being aggressive or looking like would flee when he wass tasered so there was no rush to taser Andy. Andy was therefore a non comabative subject per GGPD General Order 2.6 and Lux testified he trained his students including Gendreau

constitute a genuine issue of material fact precluding summary judgment; it is immaterial in light of Andy's actual resistance while being detained, and the totality of the circumstances confronting the officers during that detention. Officer Karschamroon testified that he did not feel it was necessary to take out any weapon only up to the point of placing the first handcuff on Andy's wrist. Officer Gendreau testified that Andy's conduct and appearance was indicative of someone who potentially is going to throw a punch. Plaintiffs' misrepresent the testimony of Benedict Lux, which was based on incomplete hypothetical questioning and not on facts relevant to this case.

Karschamroon Depo., 251:21-252:6,

not taser such subjects.	Gendreau Depo., 178:5-16.
Karschamroon testified he saw no	
reason to take out any weapons against	
Andy and had no idea why Gendreau	
was tasering Andy. Lux testified	
Karshamroon as the first officer on	
scene should have detennined why	
Gendreau was going to taser Andy.	
Supporting Evidence: Exhibit B,	
Deposition of Daniel Karschamroon,	
pp. 251: 17-25, 252: 1-118, 355: 21-24,	
357: 3-18, 360: 1-6; Exhibit C,	
Deposition of Richard Gendreau, pp.	
96: 1-16,174: 14-17; 176: 1-25, 177: 1-	
10, 182: 2-23, 187: 1-8, 220: 1-24, 225:	
17-24, 266: 1-10, 327: 17-22, 328: 1-	
14/20-25, 329: 1-18; Exhibit F,	
Deposition of Benedict Lux, pp. 176:	
15-22,177:7-20,178:5-14,179: 5-12,	
204: 1-25, 205: 1-15, 206: 9-22, 209:	
1-25, 210: 8-18, 211: 9-11, 212: 13-18,	

	244: 14-25, 247: 21-25, 252: 21-25, pp.	
	253: 1-3/5-12, 254, 255: 1-5/12-15;	
	Exhibit H, GGPD General Order 2.24,	
	2.6; Exhibit J, Karschamroon GGPD	
	Internal Affairs Interview, pp. 15.	
288. As Andy was seated upright and	288. Disputed: Zimmerman testified	288. Plaintiff's evidence does not
leaning against Officer El-Farra's leg,	Andy fell hard to the ground after the	constitute a genuine issue of material
his breathing was observed to be	tasering like a "sack of potatoes" and	fact precluding summary judgment; it is
labored but no officer believed the	saw, nothing consistent with Andy	immaterial in light of the undisputed
situation to be critical. Officer	being gently placed on the ground.	fact that GG Fire Department
Karschamroon saw nothing to suggest a	Zimmeman testified Andy was a fat	Paramedics were promptly summoned.
life-threatening situation, Officer	guy and the officers could not have	In any event, Zimmerman has had no
Gendreau "felt comfortable" upon	placed him gently down if they wanted.	medical training, and although his
hearing the approach of the medics, and	Zimmerman testified when Andy hit	eyesight is admittedly impaired, he
Officer El-Farra could see Andy's chest	the ground was dead and never moved	never wears his prescription contact
rising and falling.	again on his own. Zimmerman testified	lens. Zimmerman observed the
288. Karschamroon Decl., ¶ 35;	when the police rolled Andy against an	incident from a distance of
Gendreau Decl., ¶¶ 33-34; El-Farra	officers legs he could clearly see Andy	approximately 40-50 feet and could not
Decl., ¶¶10	chest and stomach and he was clearly	tell what small, detailed movements
	not breathing. Karschamroon testifed	were occurring. Zimmerman testified
	Gendreau opened up Andy's eyes and	that it was possible that Andy was

Karschamroon could not tell if Andy was breathing. Zimmerman said he saw Gendreau slapping Andy's face and saying "to stop faking". Bua Phan also testified Andy died immediately after the tasering.

Dr. Fukumoto testified the evidence is consistent with Andy being dead immediately after he saw tasered.

Dr. Fukumoto also testified that if officers did see labored or heavy breathing they should have known Andy was in cardiad distress and taken off the handcuffs at a minimum.

Supporting Evidence: Exhibit A,
Deposition of Mark Zimmerman,
pp.108: 1-11/18-24, 110: 1-13/22-25,
111: 10- 17/18-22, 112: 25, 121: 611/15-24, 123: 15-25, 240: 21-25, 242:
13-25, 243: 11-16, 244: 12-15, 246: 7-

breathing after being tased and that he just did not observe it, and that his belief that Andy was dead is not based on any actual evidence. Dr. Fukumoto testified that he has no way of knowing when Andy died and that he relies on the physician's death pronouncement as to the time of death.

Zimmerman Depo., 22:3-7, 162:11-19, 180:20-21; 201:6-12, 293:23-294:12; Fukumoto Depo., 187:19-188:5, 258:7-259:25

19; Exhibit B, Deposition of Daniel

	Karschamroon, pp. 397: 7-8; Exhibit D,	
	Deposition of Richard Fukumoto,	
	M.D., pp. 90: 13-16, 258: 16-19, 259:	
	2-23, 260: 1-10, 261: 13-15, 264: 21-	
	24, 266: 13-22, 268:6-22, 280: 19-25, 281:	
	10-25, 282: 7-15, 283: 4-16/21-23; Exhibit	
	E, Deposition of Bua Thi Phan, pp.	
	243.1: 16-18; 256.1: 2-5.	
289. Officer Gendreau asked Officer	289. Zimmerman testified all police	289. Plaintiff's evidence does not
El-Farra to stay with Andy as he and	officers arrived outside until the	constitute a genuine issue of material
Officer Karschamroon ascertained the	paramedics arrived looking	fact precluding summary judgment; it is
welfare or condition of the calling party	increasingly more concerned because	immaterial in light of the undisputed
or family considering the nature of the	Andy was not moving. Per Exhibit 3	fact that GG Fire Department
call and the need to determine if anyone	of Defendants Motion El-Farra was on	Paramedics were promptly summoned.
had been injured or attacked by Andy.	scene at 11:38 and Paramedics did not	In any event, Zimmerman "thinks"
Officer El-Farra estimates that he was	arrive until 11:44 so El-Farra was on	Officers Karschamroon and Gendreau
in front of the residence, with Andy, for	scene for several minutes prior to the	remained with Andy until the
approximately 15 to 20 seconds	paramedics arrival.	paramedics arrived but concedes he lost
thereafter prior to medics arriving.	Supporting Evidence: Exhibit A,	track of them.
289. Karschamroon Decl., $\P\P$ 35-36;	Deposition of Mark Zimmerman, pp.	Zimmerman Depo., 264:18-23, 267:12-
Gendreau Decl., ¶ 33-34; El-Farra	123: 15-25,246: 7-19, 251: 4, 264: 18-	14, 307:21-25

Decl., ¶ 11-12	25,265: 5-14118-25,267: 6-8.; Defense	
	Exhibit 3, Dispatch CAD.	
290. Officers Gendreau and	290. Disputed: Zimmerman testified	290. Plaintiff's evidence does not
Karschamroon then contacted Andy's	all police officers arrived outside until	constitute a genuine issue of material
family inside the residence, but it	the paramedics arrived looking	fact precluding summary judgment; it is
appeared the only individual who	increasingly more concerned because	immaterial in light of the undisputed
sustained an injury was Plaintiff Bua	Andy was not moving. Per Exhibit 3 of	fact that GG Fire Department
Thi Phan, who had sustained a scraped	Defedants Motion EI-Farra was on	Paramedics were promptly summoned.
elbow. Her injury was measured and	scene at 11:38 and Paramedics did not	In any event, Zimmerman "thinks"
photographed.	arrive until 11:44 so EI-Farra was on	Officers Karschamroon and Gendreau
290. Karschamroon Decl., ¶¶37-38;	scene for minutes prior to the	remained with Andy until the
Gendreau Decl., ¶ 35; Exhibit 4,	paramedics arrival. There has been no	paramedics arrived but concedes he lost
Photograph of Injury; Exhibit 5,	testimony by Karschamroon or	track of them. Further, Plaintiffs do not
Photograph of Screen	Gendreau that they ever personally	deny that Bua Thi Phan was injured in a
	observed any injury nor photographed	struggle with Andy.
	any injury to Bua Phan so there is a	Zimmerman Depo., 264:18-23, 267:12-
	complete lack of foundation for this	14, 307:21-25
	"new" testimony. Again, another	
	example of recreating history by	
	Karschamroon and Gendreau and	
	another reason to disbelieve both of	

	their Declarations. Further, the attached	
	photographs were submitted late and	
	beyond the Motion Cut-Off time.	
	Supporting Evidence: Exhibit A,	
	Deposition of Mark Zimmerman, pp.	
	123: 15-25,246: 7-19, 251: 4,264: 18-	
	25,265: 5-14/18-25,267: 6-8.; Defense	
	Exhibit 3, Dispatch CAD.	
291. An approaching medic was	291. Disputed: Zimmerman testified	291. Plaintiff's evidence does not
informed by Officer El-Farra about the	Andy fell hard to the ground after the	constitute a genuine issue of material
tasing and Andy's labored breathing.	tasering like a "sack of potatoes" and	fact precluding summary judgment; it is
The medic checked for Andy's pulse	saw nothing consistent with Andy	immaterial in light of the undisputed
and informed Officer El-Farra that he	being gently placed on the ground.	fact that GG Fire Department
needed to start CPR. This took Officer	Zimmerman testified Andy was a fat	Paramedics were promptly summoned.
El-Farra completely by surprise. When	guy and the officer could not have	In any event, Zimmerman has had no
he had looked away from Andy to	placed him gently down if they wanted.	medical training, and although his
speak to the medic, Andy had been	Zimmerman testified when Andy hit	eyesight is admittedly impaired, he
breathing. At no time did Officer El-	the ground was dead and never moved	never wears his prescription contact
Farra hear or see Andy stop breathing,	again on his own. Zimmerman testified	lens. Zimmerman observed the
or notice any other physical difficulties.	when the police rolled Andy against an	incident from a distance of
	officers legs he could clearly see Andy	approximately 40-50 feet and could not

291. El-Farra Decl., ¶ 13-17

chest and stomach and he was clearly not breathing. Karschamroon testified Gendreau opened up Andy's eyes and Karschamroon could not tell if Andy was breathing. Zimmerman said he saw Gendreau slapping Andy's face and saying "to stop faking". Bua Phan also testified Andy died immediately after tasering.

Dr. Fukumoto testified the evidence is consistent with Andy being dead immediately after he saw tasered.

Dr. Fukumoto also testified that if officers did see labored or heavy breathing they should have known Andy was in cardiad distress and taken off the handcuffs at a minimum.

Supporting Evidence: Exhibit A, Deposition of Mark Zimmerman,

pp.108: 1-11/18-24, 110: 1-13/22-25,

111: 10- 17/18-22, 112: 25, 121: 6-

tell what small, detailed movements were occurring. Zimmerman testified that it was possible that Andy was breathing after being tased and that he just did not observe it, and that his belief that Andy was dead is not based on any actual evidence. Dr. Fukumoto testified that he has no way of knowing when Andy died and that he relies on the physician's death pronouncement as to the time of death.

Zimmerman Depo., 22:3-7, 162:11-19, 180:20-21; 201:6-12, 293:23-294:12; Fukumoto Depo., 187:19-188:5, 258:7-259:25

	11/15-24, 123: 15-25, 240: 21-25, 242:	
	13-25, 243: 11-16, 244: 12-15, 246: 7-	
	19; Exhibit B, Deposition of Daniel	
	Karschamroon, pp. 397: 7-8; Exhibit D,	
	Deposition of Richard Fukumoto,	
	M.D., pp. 90: 13-16, 258: 16-19, 259:	
	2-23, 260: 1-10, 261: 13-15, 264: 21-	
	24, 266: 13-22, 268:6-22, 280: 19-25,	
	281: 10-25, 282: 7-15, 283: 4-16/21-	
	23; Exhibit E, Deposition of Bua Thi	
	Phan, pp.243.1: 16-18; 256.1: 2-5.	
292. An approaching medic was	292 Disputed: Zimmerman testified	292. Plaintiff's evidence does not
informed by Officer El-Farra about the	Andy fell hard to the ground after the	constitute a genuine issue of material
tasing and Andy's labored breathing.	tasering like a "sack of potatoes" and	fact precluding summary judgment; it is
The medic checked for Andy's pulse	saw nothing consistent with Andy	immaterial in light of the undisputed
and informed Officer El-Farra that he	being gently placed on the ground.	fact that GG Fire Department
needed to start CPR. This took Officer	Zimmerman testified Andy was a fat	Paramedics were promptly summoned.
El-Farra completely by surprise. When	guy and the officer could not have	In any event, Zimmerman has had no
he had looked away from Andy to	placed him gently down if they wanted.	medical training, and although his
speak to the medic, Andy had been	Zimmerman testified when Andy hit	eyesight is admittedly impaired, he
breathing. At no time did Officer El-	the ground was dead and never moved	never wears his prescription contact

Farra hear or see Andy stop breathing, or notice any other physical difficulties.

292. El-Farra Decl., ¶ 13-17

again on his own. Zimmerman testified when the police rolled Andy against an officers legs he could clearly see Andy chest and stomach and he was clearly not breathing. Karschamroon testified Gendreau opened up Andy's eyes and Karschamroon could not tell if Andy was breathing. Zimmerman said he saw Gendreau slapping Andy's face and saying "to stop faking". Bua Phan also testified Andy died immediately after tasering.

Dr. Fukumoto testified the evidence is consistent with Andy being dead immediately after he saw tasered.

Dr. Fukumoto also testified that if officers did see labored or heavy breathing they should have known Andy was in cardiad distress and taken off the handcuffs at a minimum.

lens. Zimmerman observed the incident from a distance of approximately 40-50 feet and could not tell what small, detailed movements were occurring. Zimmerman testified that it was possible that Andy was breathing after being tased and that he just did not observe it, and that his belief that Andy was dead is not based on any actual evidence. Dr. Fukumoto testified that he has no way of knowing when Andy died and that he relies on the physician's death pronouncement as to the time of death.

Zimmerman Depo., 22:3-7, 162:11-19, 180:20-21; 201:6-12, 293:23-294:12; Fukumoto Depo., 187:19-188:5, 258:7-259:25

Supporting Evidence: Exhibit A,

	Deposition of Mark Zimmerman,	
	pp.108: 1-11/18-24, 110: 1-13/22-25,	
	111: 10- 17/18-22, 112: 25, 121: 6-	
	11/15-24, 123: 15-25, 240: 21-25, 242:	
	13-25, 243: 11-16, 244: 12-15, 246: 7-	
	19; Exhibit B, Deposition of Daniel	
	Karschamroon, pp. 397: 7-8; Exhibit D,	
	Deposition of Richard Fukumoto,	
	M.D., pp. 90: 13-16, 258: 16-19, 259:	
	2-23, 260: 1-10, 261: 13-15, 264: 21-	
	24, 266: 13-22, 268:6-22, 280: 19-25,	
	281: 10-25, 282: 7-15, 283: 4-16/21-	
	23; Exhibit E, Deposition of Bua Thi	
	Phan, pp.243.1: 16-18; 256.1: 2-5.	
293. After checking the house, the	293 Disputed: Zimmerman testified	293. Plaintiff's evidence does not
Officers Gendreau and Karschamroon	all police officers arrived outside until	constitute a genuine issue of material
started toward the front door. They	the paramedics arrived looking	fact precluding summary judgment; it is
could then see the paramedics	increasingly more concerned because	immaterial in light of Andy's actual
performing CPR on Andy. This was a	Andy was not moving. Zimmerman	resistance while being detained, the
"shock" and "surprise" to both officers.	testified Andy fell hard to the ground	totality of the circumstances
293. Karschamroon Decl., ¶¶39;	after the tasering like a "sack of	confronting the officers during that

Gendreau Decl., ¶ 38

potatoes" and saw nothing consistent with Andy being gently placed on the ground. Zimmeman testified Andy was a fat guy and the officers could not have placed him gently down if they wanted. Zimmerman testified when Andy hit the ground was dead and never moved again on his own. Zimmerman testified when the police rolled Andy against an officer's legs he could clearly see Andy chest and stomach and he was clearly not breathing. Karschamroon testifed Gendreau opened up Andy's eyes and Karschamroon could not tell if Andy was breathing. Zimmerman said he saw Gendreau slapping Andy's face and saying "to stop faking". Bua Phan also testified Andy died immediately after the tasering. Dr. Fukumoto testified the evidence is

detention, and in light of the undisputed fact that GG Fire Department Paramedics were promptly summoned. In any event, the Plaintiffs' do not dispute the Defendants' UMF, but Dr. Fukumoto opinion that the tasering was a factor in Andy's death was because he already had a bad heart and liver. Dr. Fukumoto testified that he has no way of knowing when Andy died and that he relies on the physician's death pronouncement as to the time of death. Fukumoto Depo., 187:19-188:5, 206:23 - 207:11, 258:7-259:25

consistent with Andy being dead ' immediately after he saw tasered. Dr. Fukumoto also testified that if officers did see labored or heavy breathing they should have known Andy was in cardiad distress and taken off the handcuffs at a minimum. Supporting Evidence: Exhibit A, Deposition of Mark Zimmerman, pp. 108: 1-11118-24, 110: 1-13/22-25, 111:10-17/18-22,112: 25,121: 6-11/15-24,123: 15-25,240: 21-25,242: 13-25, 243: 11-16,244: 12-15,246: 7-19; Exhibit B, Deposition of Daniel Karschamroon, pp. 397: 7-8; Exhibit 0, Deposition of Richard Fukumoto, M.D., pp. 90: 13-16,258: 16-19,259: 2-23, 260: 1-10,261: 13-15,264: 21-24,266:13-22,268:6-22,280: 19-25,281: 10-25,282: 7-15,283: 4-16/21-23; Exhibit E, Deposition of Bua Thi Phan,

	pp. 243.1: 16-18; 256.1: 2-5.	
294. Although the paramedics	294. Disputed: Dr. Fukumoto testified	294. Plaintiff's evidence does not
rendered emergency care and	no drug played any role in Andy's	constitute a genuine issue of material
transported to the hospital, Andy Tran	death and none where at fatal levels.	fact precluding summary judgment; it is
did not survive. Toxicology results	He testified Andy died from being	immaterial in light of Andy's actual
revealed substantial levels of	tasered and the evidence was consistent	resistance while being detained, the
Diphenhydramine and	with Andy dying immediatly after	totality of the circumstances
Trihexylphenidyl in his system at the	being hit with the taser. Andy was in	confronting the officers during that
time of death.	full cardiac arrest when the paramedics	detention, and in light of the undisputed
294. Exhibit 6, Toxicology Report	arrived and his eyes were fixed and	fact that GG Fire Department
	dilated. Dr. Fukumoto has been	Paramedics were promptly summoned.
	qualified as an expert in interpreting	In any event, the Plaintiffs' do not
	toxicology results in Courts.	dispute the Defendants' UMF, but Dr.
	Supporting Evidence: Exhibit D,	Fukumoto opinion that the tasering was
	Deposition of Richard Fukumoto,	a factor in Andy's death was because he
	M.D., pp. 63: 1-8, 66: 18-22, 67: 4-5,	already had a bad heart and liver. Dr.
	90: 13-16, 141: 5-25, 142: 6-7, 143: 2-	Fukumoto testified that he has no way
	3, 228: 13-25, 229: 20-25, 239: 10-	of knowing when Andy died and that
	14/19-25, 240: 1-25,243: 1-25, 245:	he relies on the physician's death
	17-25, 260: 1-10, 283: 4-16/21-23,	pronouncement as to the time of death.
	296: 1-7, 304: 1-3/16-18, 305: 8-25,	Fukumoto Depo., 187:19-188:5,

	306: 1-2/10-14, 307: 1-8/22-25, 308: 5-	206:23 - 207:11, 258:7-259:25
	7, 309: 1-5/18-22, 347: 1-4, 355: 2-9.	

295. The Coroner listed the cause of death as "Cardiac arrhythmia during struggle with law enforcement due to dilated hyertropic cardiomyopathy with diphenhydramine and trihexylphenidl intoxication."

295. Exhibit 7, Autopsy Report

295. **Disputed:** Dr. Fukumoto testified no drug played any role in Andy's death and none where at fatal levels. He testified Andy died from being tasered and the evidence was consistent with Andy dying immediatly after being hit with the taser. Andy was in full cardiac arrest when the paramedics arrived and his eyes were fixed and dilated. Dr. Fukumoto has been qualified as an expert in interpreting toxicology results in Courts. Dr. Fukumoto testified he wass provided an incorrect history including being told Andy was breathing when paramedicas arrived and was never told exactly what type of struggle Andy was alleged to have been involved in with police. After being provided the true facts, including Dr. Karschamroon's deposition, Dr. Fukumoto concluded

Andy died from the tasering. The

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295. Plaintiff's evidence does not constitute a genuine issue of material fact precluding summary judgment; it is immaterial in light of Andy's actual resistance while being detained, the totality of the circumstances confronting the officers during that detention, and in light of the undisputed fact that GG Fire Department Paramedics were promptly summoned. In any event, the Plaintiffs' do not dispute the Defendants' UMF, but Dr. Fukumoto opinion that the tasering was a factor in Andy's death was because he already had a bad heart and liver. Dr. Fukumoto testified that he has no way of knowing when Andy died and that he relies on the physician's death pronouncement as to the time of death. Fukumoto Depo., 187:19-188:5, 206:23 - 207:11, 258:7-259:25

ADJUDICATION NUMBER 11

PLAINTIFFS' EIGHTH CAUSE OF ACTION FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS FAILS AS A MATTER OF LAW

296. On September 3, 2008, at approximately 11:29 a.m., GGPD officers Richard Gendreau and Daniel Karschamroon were dispatched to a report of a "violent, mentally ill male" trying to break into the residence, that someone had been assaulted, and that there was an unknown "weapon" involved.

296. Karschamroon Decl., ¶¶ 1-5; Gendreau Decl., ¶¶ 1-5; Exhibit 2, Transcript/Audio 911 Recording; Exhibit 3, Dispatch CAD. 296. **Disputed:** Neither the 911
Transcript nor the Dispatch CAD state anything about a "violent, mentally ill male" trying to break into residence nor assaulting anyone. They both say this was a 5150 call and Andy needs to' be taken to a hospital. The 911 caller never said Andy had weapons, the dispatcher made a mistake.

Supporting Evidence: Defense
Exhibit 2, Transcript/Audio 911;
Defense Exhibit 3, Dispatch CD. As will be shown throughout Gendreau's and Karshamroon's Declaration are inconsitent with both their Internal Affairs interviews and Deposition Testimony.

296. Neither the 911 audio nor the CAD dispatch refer to "5150" as claimed by Plaintiffs, but do refer to [Andy Tran] as being crazy, with weapons, and having committed an assault. Although requests were made to take [Andy] to the hospital, that does not constitute a genuine issue of material fact precluding summary judgment; officer actions are judged as to all information known or relied upon.

Karschamroon Decl., ¶¶ 1-5;
Gendreau Decl., ¶¶ 1-5; Exhibit 2,
Transcript/Audio 911 Recording;
Exhibit 3, Dispatch CAD.

	Supporting Evidence: Exhibit C,	
	Deposition of Gendreau, pp. 305: 5-25;	
	Exhibit I, Gendreau GGPD Internal	
	Affairs Interview, pp. 17-18.	
297. Police Dispatch as well as the	297. Disputed: Dispatch apparently	297. Plaintiffs do not dispute
CAD printout noted the male subject	did not understand 911 call because the	Defendants' UMF, but rather argue that
(Andy Tran) was a "mental case" and	911 caller said nothing about weapons.	police dispatch erroneously concluded
"crazy," that he had weapons, and that a	Dispatch does indicate major	that Andy had weapons. This does not
crying child could be heard in the	languange barrier between 911 caller	constitute a genuine issue of material
background. The reporting party	and dispacth. The CAD printout clearly	fact precluding summary judgment;
indicated that he was dizzy and he	shows this was a 5150 call and	officer actions are judged as to all
would not answer questions about Andy	Gendreau testified he was given further	information known or relied upon, and
Tran's location, and kept repeating	information of Andy's prior mental	it remains undisputed that Dispatch
"send someone right now, send	health history. The CAD clearly states	relayed information that Andy was
someone right now. Take to hospital."	Andy needs to be taken to the hospital.	crazy, with weapons, and had
297. Karschamroon Decl., ¶ 6	Supporting Evidence: Exhibit C,	committed an assault. Further, the
Gendreau Decl., ¶ 6; Exhibit 2,	Deposition of Gendreau, pp. 305: 5-25;	Plaintiffs citation to Officer Gendreau's
Transcript/Audio 911 recording;	Exhibit I, Gendreau GGPD Internal	deposition testimony does not support
Exhibit 3, Dispatch CAD.	Affairs Interview, pp. 17-18.	their assertion that he was aware of
		Andy's mental health history before
		arriving on scene, but rather only that

		he did not recall telling Internal Affairs
		that he acquired such knowledge. In
		any event, such knowledge would be
		immaterial in light of Andy's actual
		resistance while being detained, and the
		totality of the circumstances
		confronting the officers during that
		detention.
		Transcript/Audio 911 Recording;
		Exhibit 3, Dispatch CAD; Gendreau
		Depo., 305:5-25
298. Officers Karschamroon and	298 Disputed: Mark Zimmerman	298. The Plaintiff's citation to Mark
Gendreau arrived at approximately	testified he never saw Andy place any	Zimmerman's deposition does not
11:36 a.m., with Karschamroon first to	portion of his body in the window; in	support their assertion. Zimmerman
arrive. He noticed a male individual	fact he testified he began yelling as	testified that Andy stopped "directing
who appeared to be trying to break into	Andy taking off screen and Andy then	his attention towards opening the
or enter the residence through a	turned towards him at the same time	window and getting in the house" after
window, and broken screen nearby. As	Karschamroon arrived.	Officer Karschamroon ordered Andy to
Officer Karschamroon approached him,	Supporting Evidence: Exhibit A,	stop. In any event, this does not
his body halfway into the window and	Deposition of Mark Zimmerman, pp.	constitute a genuine issue of material
he appeared to be trying to grab	51: 9-22, 52: 1-24.	fact precluding summary judgment; it is

something from inside.		immaterial in light of Andy's actual
298. Karschamroon Decl., ¶ 7; Exhibit		resistance while being detained, and the
3, Dispatch CAD.		totality of the circumstances
		confronting the officers during that
		detention.
		Zimmerman Depo., 50:1-19, 52:7-16
299. Officer Karschamroon was aware	299. Disputed: Officer Karschamroon	299. The Plaintiffs do not dispute
through Dispatch the subject's name	testified he called Andy by his name	Officer Karschamroon called Andy by
was Andy Tran, so he called out	Andy and he was uncertain if he	name, only the source of that
"Andy" three to four times to get his	learned Andy's name from hearing Mr.	information. Further, the cited
attention. Andy stopped, slowly turned	Zimmerman saying it or hearing	deposition testimony does not indicate
around, and faced Officer	Andy's name from dispatch.	how many times Officer Karschamroon
Karschamroon. Andy was instructed to	Karschamroon testified Andy	called Andy's name. The remainder of
come down from the porch, which he	responded immediately and never	Defendants' UMF remains
eventually did, approaching Officer	testified he yelled 3-4 times.	unchallenged. In any event, the
Karschamroon with his hands at his	Supporting Evidence: Exhibit B,	Plaintiffs' evidence does not constitute
sides.	Deposition of Daniel Karschamroon,	a genuine issue of material fact
299. Karschamroon Decl., $\P\P$ 8-10.	pp.	precluding summary judgment; it is
	245:15-25,246: 1-4.	immaterial in light of Andy's actual
		resistance while being detained, and the
		totality of the circumstances

		confronting the officers during that
		detention.
		Karschamroon Depo., 245:15-25, 246:1-4
300 Officer Karschamroon could	300. Disputed: Karschamroon	300. Plaintiffs' evidence does not
Andy had a blank stare and appeared to	testified Andy had a confused, puzzled	constitute a genuine issue of material
be confused or unsure of what was	look on his face and appeared in need	fact precluding summary judgment; it is
going on. Andy stopped his approach	of medical help.	immaterial in light of Andy's actual
when he was approximately 20 feet	Karschamroon testified he told Andy to	resistance while being detained, and the
from the officer, who then asked Andy	stop when he was 10-15 feet away and	totality of the circumstances
to come closer. As Andy slowly	put his hands on his head and he	confronting the officers during that
approached to within 10 feet of Officer	complied. He never testified Andy ever	detention. In any event, the deposition
Karschamroon's location, he was	stopped before being told to do so and	testimony of Officer Karschamroon
instructed to stop. Andy stopped, but	was told to come closer.	cited by Plaintiffs is consistent with
maintained his blank expression.	Supporting Evidence: Exhibit B,	Defendants' UMF, namely, that Andy
300. Karschamroon Decl., $\P\P$ 11, 12	Deposition of Daniel Karschamroon,	was instructed to stop either "10 feet"
	pp. 244: 15-25, 259: 1-7, 257: 15-22,	or "10-15 feet" from Officer
	276: 19-25, 279: 14-16; Exhibit J,	Karschamroon's location. The cited
	Karschamroon GGPD Internal Affairs	deposition testimony does not include a
	Interview, pp. 5-6.	question whether Andy stopped at any

		time prior to being so instructed, and
		would be an immaterial variance
		regardless.
301 Andy was instructed to put his	301. Undisputed	301. Undisputed.
hands on top of his head and turn		
around, and he slowly complied with		
the directive. Officer Karschamroon		
then approached Andy and told him to		
interlock his fingers, which he did.		
Andy never spoke, but did appear to		
understand what was being said. 301.		
Karschamroon Decl., $\P\P$ 13, 14		
302. Grabbing Andy's hands, Officer	302. Disputed: Neither the 911	302. Plaintiffs' evidence does not
Karschamroon sought to reassure him	Transcript nor the Dispatch CAD state	dispute that Officer Karschamroon
by saying "there's nothing wrong,"	anything about a "violent, mentally ill	attempted to calm and relax Andy, nor
"we're just here to help you," and to	male" trying to break into residence nor	the nature of the call received by
"calm down" and "relax." However, it	assaulting anyone. They both say this	Dispatch. Neither the 911 audio nor the
was important to get Andy secured and	was a 5150 call and Andy needs to be	CAD dispatch refer to "5150" as
handcuffed as the call indicated he was	taken to a hospital. The 911 caller	claimed by Plaintiffs, but do refer to
a violent mental individual with a	never said Andy had weapons, the	[Andy Tran] as being crazy, with

weapon.	dispatcher made a mistake. Given most	weapons, and having committed an
302. Karschamroon Decl., $\P\P$ 14	of Karschamroon's Declaration is	assault. Although requests were made
	vastly different than his Internal Affairs	to take [Andy] to the hospital, that does
	Interview and Deposition Testimony	not constitute a genuine issue of
	anything he says he did is subject to	material fact precluding summary
	impeachment now for prior inconsitent	judgment; officer actions are judged as
	statements, thereby everything in his	to all information known or relied
	Declaration should be viewed with	upon.
	Suspicion.	Karschamroon Decl., $\P\P$ 1-5;
	Supporting Evidence: Defense	Gendreau Decl., $\P\P$ 1-5; Exhibit 2,
	Exhibit 2, Transcript/Audio 911;	Transcript/Audio 911 Recording;
	Defense Exhibit 3, Dispatch CAD.	Exhibit 3, Dispatch CAD.
303. As the first handcuff went on	303 Disputed: Officer Karschamroon	303. Plaintiffs argue semantics but do
Andy's right wrist, his hands	never told Internal Affairs Andy's	not dispute any material fact. Officer
immediately tensed up into fists.	hands ever balled into fists and he	Karschamroon testified at his
Officer Richard Gendreau arrived	testified repeatedly that Andy's hands	deposition that when a handcuff was
Officer Karschamroon was trying to	always remained interlocked after he	placed on Andy's right wrist, Andy
separate Andy's now-clenched fists.	was told to do so and he never saw	"tensed" and Officer Karschamroon
303. Karschamroon Decl., ¶ 15	Andy's hands ball into fists.	"could feel his fingers closing, kind of
	Karschamroon further testified he did	curling up from that interlocked

	not know whether Andy's tension was a	position" and "close up as if the fingers
	result of his attempt to follow the last	were curling." Officer Karschamroon
	command given to interlock his fingers.	also stated in his deposition that Andy
	He also testified Andy was never	was "actively resisting" and that he
	aggressive.	"thought it might turn violent."
	Supporting Evidence: Exhibit J,	Karschamroon Depo., 321:22-322:22,
	Karschamroon GGPD Internal Affairs	362:12-17, 366:14-19
	Interview, pp. 7-8; Exhibit B,	
	Deposition of Daniel Karschamroon,	
	pp. 261: 12-18, 264: 17-20, 265: 13-18,	
	268: 9-10, 270: 10-11, 281: 9-25, 284:	
	1-25, 285: 1-6.	
304. Officer Gendreau noticed the	304. Disputed: Officer Gendreau said	304. Plaintiffs do not dispute any
struggle to get Andy's arms behind his	he walked fast and did not run. Officer	material fact, argue semantics, and
back, so he immediately ran over to	Karschamroon testified he never	mischaracterize testimony. Mark
assist. Officer Gendreau was told that	struggled with Andy is Gendreau's	Zimmerman confirmed that Officer
one handcuff was secured, but that	presence nor tried to force Andy's	Gendreau approached at "a pretty fast
Andy was not allowing himself to be	hands behind his back. Karschamroon	pace." Officer Gendreau testified that
cuffed. Officer Karschamroon had a	never said Andy would not allow self	Officer Karschamroon told him that
concern that the encounter might turn	to be handcuff and said he told	Andy was tensed up and that he
violent due to Andy's reaction when the	Gendreau Andy was complying but	couldn't get Andy's hands behind his

first handcuff was placed on his wrist.	hands tensed when placed first	back into a handcuffing position. This
304. Karschamroon Decl., ¶¶ 16, 17;	handcuff on. Also Karschamroon and	is consistent with Officer
Gendreau Decl., ¶¶ 7, 8	Zimmerman disagree with most of	Karschamroon's testimony that he told
	what Gendreau said occured and both	Gendreau that Andy was complying
	Gendreau and Karschamroon have now	and tensed up after one handcuff was
	filed Declarations which are filed with	secured. Nothing in the cited testimony
	inconsistent statements from their	disputes that Andy continued to resist
	Internal Affairs Interviews and	after Gendreau arrived. Further, Mark
	Deposition Testimony their	Zimmerman testified that Officer
	Declarations should be viewed with	Gendreau did assist Officer
	suspicion.	Karschamroon by putting "his hands on
	Supporting Evidence: Exhibit C,	Andy's hands or on the other officer's
	Deposition of Richard Gendreau, pp.	hands or in that vicinity" for "about 20
	175: 1-25, 176: 1-25, 177: 1-5, 206:	seconds" in what appeared to him as an
	19-25; Exhibit B, Deposition of Daniel	effort to "keep more control" of Andy.
	Karschamroon, pp. 285: 11-13;	Zimmerman Depo., 92:19-25, 93:16-
	Karschamroon GGPD Internal Affairs	19, 209:7-22; Gendreau Depo., 175:20-
	Interview, pp. 9.	24; Karschamroon Depo., 285:11-14.
305. Andy continued to resist, failed	305. Disputed: Officer Karschamroon	305. Plaintiffs' evidence does not dispute
to obey commands, and did not speak.	had full control of Andy and there was	any material fact, and does not indicate that
Officer Gendreau could see that Andy's	never a struggle between the two.	Officer Karschamroon had full control of

method of resistance was "complete rigidity"; both of his arms were up, his fists were balled, and he was shaking.

Despite Officer Karschamroon's best efforts to pull Andy's arms down behind his back, his arms would not move.

305. Karschamroon Decl., ¶ 16 Gendreau Decl., ¶ 9

Officer Karschamroon testified he never struggled with Andy is Gendreau's presence nor tried to force Andy's hands behind his back. Karschamroon never said Andy would not allow self to be handcuff and said he told Gendreau Andy was complying but hands tensed when placed first handcuff on. Also given Karschamroon and Zimmennan disagree with most of what Gendreau said occured and both Gendreau and Karschamroon have now filed Declarations which are filed with inconsistent statements from their Internal Affairs Interviews and Deposition Testimony their Declarations should be viewed with suspicion.

Supporting Evidence: Exhibit C, Deposition of Richard Gendreau, pp. 175: 1-25, 176: 1-25, 177: 1-5,206: 19-

Andy or that there was no resistance. Plaintiffs ignore Officer Karschamroon testimony that when a handcuff was placed on Andy's right wrist, Andy "tensed" and Officer Karschamroon "could feel his fingers closing, kind of curling up from that interlocked position" and "close up as if the fingers were curling." Officer Karschamroon also stated in his deposition that Andy was "actively resisting" by not allowing his arms to be pulled apart and providing tension to pull his arms together, and that he "thought it might turn violent." Nothing in Plaintiffs' cited testimony disputes that Andy continued to resist after Gendreau arrived. Further, Mark Zimmerman testified that Officer Gendreau did assist Officer Karschamroon by putting "his hands on Andy's hands or on the other officer's hands or in that vicinity" for "about 20 seconds" in what appeared to him as an effort to "keep more control" of Andy.

	25; Exhibit B, Deposition of Daniel	Karschamroon Depo., 321:22-322:22, 280:12-
	Karschamroon, pp. 285: 11-13;	23, 362:12-17, 366:14-19, Zimmerman Depo.,
	Karschamroon GGPD Internal Affairs	92:19-25, 93:16-19, 209:7-22
	Interview, pp. 9.	
306 To prevent a possible escape,	306. Disputed: Officer Karschamroon	306. Plaintiffs do not dispute any
Officer Gendreau moved in front of	testified he was a foot from Andy and	material fact precluding summary
Andy. From that position, he could see	1-3 feet from Gendreau and He never	judgment. The assertion that Andy did
that Andy was shaking and he began to	heard Andy growl or see his foaming at	not try to escape does dispute Officer
growl. Andy was not blinking, his	the mouth, or see Andy shaking other	Gendreau's motivation for positioning
pupils appeared to be dilated, and he	than when Karschamroon shook Andy	himself in front of Andy. Further,
had saliva coming from the corner of	hands, which moved, to let Andy know	Officer Karschamroon was positioned
his mouth, almost as though he was	he was still behind him. Gendreau	behind Andy, and was not in a position
foaming at the mouth. Officer	testified he never feared Andy would	to see Andy's face at the time he was
Gendreau felt like Andy was looking	flee or run. Karschamroon testified	tased. As to the issue of Andy
straight through him.	Andy never made a movement	growling, Mark Zimmerman testified
306. Karschamroon Decl., ¶ 16	consisting with fleeing or running away	that although he never saw Andy's lips
Gendreau Decl., $\P\P$ 10, 11	Supporting Evidence: Exhibit B,	moving, he heard some audible things
	Deposition of Daniel Karschamroon,	coming out of his mouth. Zimmerman
	pp. 261: 12-18, 264: 17-20, 284: 1-25,	also testified that he could see subtle
	285: 1-6, 330: 11-15; Declaration of	movement going on between the
	Daniel Karschamroon, pp. 384: 18,	officers and Andy and that there could

	385: 1-5; Exhibit C, Deposition of	have been a "whole 'nother [sic] set of
	Richard Gendreau, pp. 174: 14-17;	scenarios going on" that he did not see.
	176: 1-25, 177: 1-10,182: 2-23,187: 1-	Karschamroon Depo., 348:9-15, 355:16-19,
	8,220: 1-24, 225: 17-24, 266: 1-10.	Zimmerman Depo., 217:3-9, 222:11-223:13,
		276:22-25
307. In a casual manner, Officer	307. Disputed: Officer Karschamroon	307. Plaintiffs do not dispute
Gendreau said words to the effect of,	testified the only thing he heard	Defendants' UMF that the officers
"Hey, dude, just calm down," and	Gendreau say was "Hey, dude, calm	attempted to relax and calm Andy while
advised Andy to relax, put his hands	down." Gendreau never ackowledged	attempting to secure him, but rather
behind his back, and that "we're not	he said "dude calm down".	dispute the exact words spoken. This
here to hurt you." Officer	Karschamrron testified Gendreau never	does not create a genuine issue of
Karschamroon was reminding Andy to	told Andy to put his hands behind his	material fact precluding summary
relax as well, but he was also shaking	back and the only shaking he saw from	judgment. Further, it is immaterial that
Andy's still clenched hands to let him	Andy was Karschamroon shaking	Officer Karschamroon may not have
know he still needed to be handcuffed.	Andy to let him know he was there.	said anything to Andy about being
307. Karschamroon Decl., $\P\P$ 19, 20;	Karschamroon testifed he never said	handcuffed since the act of attempting
Gendreau Decl., ¶¶ 12, 13	anything to Andy about being	to handcuff him established the
	handcuffed.	officer's intention. Officer
	Supporting Evidence: Exhibit B,	Karschamroon's deposition testimony
	Deposition of Daniel Karschamroon,	that Andy was not allowing his arms to
	pp. 282, 345: 1-18, 268: 19-23, 269: 1-	be pulled apart and was providing

	4; 419, Exhibit B, Deposition of Daniel	tension to pull his arms together
	Karschamroon, pp. 328: 1-7,330: 11-	demonstrates resistance to that
	15/17-25, 337: 10-16, 340: 8-9, 341: 7-	intention.
	16.	Karschamroon Depo., 321:22-322:22,
		280:12-23, 362:12-17, 366:14-19
308. Andy continued to ignore the	308. Disputed: Gendreau said he did	308. Plaintiffs do not dispute any
officers' orders, and concern grew that	not believe Andy understood anything	material fact precluding summary
the dangling handcuff could be used as	he said so how can he claim Andy	judgment and mischaracterize
a weapon if Andy decided to swing his	ignored an order? Further,	testimony. Officer Karschamroon did
arm. Both officers then attempted to	Karschamroon testified that neither	not testify that "relax" and "calm
pry Andy's arms down but could not	"relax" or "dude calm down" were	down" were not lawful orders.
overcome his flexed/locked position. A	lawful orders. Both Karshamroon and	Although he did testify he had not
pain compliance technique performed	Zimmennan said Gendreau never	received training that such commands
by Officer Gendreau did nothing.	struggled with Andy except to taser	were lawful orders, he stated that the
308. Karschamroon Decl., $\P\P$ 21, 22;	him. Karschamroon testified repeatedly	commands given were appropriate
Gendreau Decl., ¶¶ 12, 14-16	he never saw Gendreau touch Andy	given the goal of relaxing Andy.
	and did not struggle either alone or	Officer Karschamroon also stated in his
	with Gendreau to get Andy's ann	deposition that Andy was "actively
	behind his back.	resisting" by not allowing his arms to
	Karschamroon testified he always had	be pulled apart and providing tension to
	ahold of the loose handcuff so it could	pull his arms together, and that he

not be dangling and used as a weapon. Again, given the many new statements which are completely inconsitent with statements made to Internal Affairs and during Deposition testimony puts the credibilty of Karschamroon and Gendreau is great doubt and their Declarations should be viewed with extreme caution.

Supporting Evidence: Exhibit B,
Deposition of Daniel Karschamroon,
pp. 273: 8-11, 274, 292: 17-23, 293: 1,
331: 16-25, 332: 18-21, 333: 7-11;
Karschamroon GGPD Internal Affairs
Interview, pp. 7-8.; Exhibit A,
Deposition of Mark Zimmerman, pp.
79:11-20,80: 10-16, 81: 4-5, 83: 1825,85:1-10,87: 3-7/16-23,97: 5-6, 100:
1-25, 102: 4-9/20-24,150: 20-25, 151:
9-11, 197:20-25,198: 1-5,209:2325,222:17-25,224: 6-12, 276: 10-

"thought it might turn violent." Nothing in Plaintiffs' cited testimony disputes that Andy continued to resist after Gendreau arrived. Further, Mark Zimmerman testified that Officer Gendreau did assist Officer Karschamroon by putting "his hands on Andy's hands or on the other officer's hands or in that vicinity" for "about 20 seconds" in what appeared to him as an effort to "keep more control" of Andy. Nothing in Zimmerman's testimony disputes the officers' account of Andy's resistance other than his own speculation. Zimmerman testified that he could see subtle movement going on between the officers and Andy and that there could have been a "whole 'nother [sic] set of scenarios going on" that he did not see. He could not hear what was being said, and although his

20,277: 1-4, 278: 18-21.	eyesight is admittedly impaired, he
	never wears his prescription contact
	lens. Zimmerman observed the
	incident from a distance of
	approximately 40-50 feet could not tell
	what small, detailed movements were
	occurring. He does not know whether
	the officers tried to move Andy's hands
	from the top of his head, and admits
	that many things could have been said
	or done which he could not observe or
	hear. While Zimmerman testified that
	Andy's hands were on his head at all
	times, he cannot say whether there was
	any kind of struggle
	Karschamroon Depo., 321:22-322:22,
	280:12-23, 283:20-284:20, 362:12-17,
	366:14-19, Zimmerman Depo., 22:3-7,
	82:11-18, 92:19-25, 93:16-19, 96:2-10,
	100:7-20, 162:11-19, 187:3-11,
	200:11-24, 201:6-12, 209:7-22, 217:3-

		9, 222:11-223:13, 276:22-25, 287:25-
		288:12.
309. Officer Gendreau thought that if a	309. Disputed: Karschamroon and	309. Plaintiffs' evidence does not
fight ensued, it was going to be a bad	Zimmerman both testified Gendreau	dispute any material fact. Plaintiffs
one given the strength that Andy had	never struggled to force Andy's hands	ignore Officer Karschamroon's
exhibited when resisting both officers	behind back. Karschamroon said	testimony that when a handcuff was
attempt to lower his arms. Officer	Gendreau never touched Andy.	placed on Andy's right wrist, Andy
Karschamroon was similarly concerned	Karschamroon testified when he shook	"tensed" and Officer Karschamroon
about officer safety.	Andy's hands they moved so the	"could feel his fingers closing, kind of
309. Karschamroon Decl., ¶ 21;	extraordinary strength Gendreau said	curling up from that interlocked
Gendreau Decl., ¶ 19	Andy had is disputed by	position" and "close up as if the fingers
	Karschamroon.	were curling." Officer Karschamroon
	Supporting Evidence: Exhibit B,	also stated in his deposition that Andy
	Deposition of Daniel Karschamroon,	was "actively resisting" by not allowing
	pp.273: 8-11 ,274, 292: 17-23, 293: 1,	his arms to be pulled apart and
	331: 16-25, 332: 18-21, 333: 7-11;	providing tension to pull his arms
	Karschamroon GGPD Internal Affairs	together, and that he "thought it might
	Interview, pp. 7-8.; Exhibit A,	turn violent." Nothing in Plaintiffs'
	Deposition of Mark Zimmerman,	cited testimony disputes that Andy
	pp.79: 11-20, 80: 10-16, 81:4-5, 83:	continued to resist after Gendreau
	18-25, 85: 1-10, 87: 3-7/16-23, 97: 5-6,	arrived. Further, Mark Zimmerman

	100: 1-25, 102: 4-9/20-24, 150: 20-25,	testified that Officer Gendreau did
	151: 9-11, 197:20-25, 198: 1-5, 209	assist Officer Karschamroon by putting
	:23-25, 222: 17-25, 224: 6-12, 276: 10-	"his hands on Andy's hands or on the
	20, 277: 1-4, 278: 18-21.	other officer's hands or in that vicinity"
		for "about 20 seconds" in what
		appeared to him as an effort to "keep
		more control" of Andy. Nothing in
		Zimmerman's testimony disputes the
		officers' account of Andy's resistance
		other than his own speculation.
		Karschamroon Depo., 321:22-322:22,
		280:12-23, 362:12-17, 366:14-19,
		Zimmerman Depo., 22:3-7, 82:11-18,
		92:19-25, 93:16-19, 96:2-10, 100:7-20,
		162:11-19, 187:3-11, 200:11-24,
		201:6-12, 209:7-22, 217:3-9, 222:11-
		223:13, 276:22-25, 287:25-288:12.
310. As Andy continued to resist	310. Disputed: Karschamroon	310. Plaintiffs do not dispute any
officer commands by remaining rigid	testified after he told Andy to interlock	material fact precluding summary
and non-responsive, Officer Gendreau	his fingers Andy was only told to	judgment and mischaracterize

decided to take out his Taser. Andy was informed several times that if he did not comply, he would be tased. Andy continued to resist, so Officer Gendreau deployed his taser once in Andy's thigh for a cycle of five seconds.

310. Karschamroon Decl., $\P\P$ 22-25; Gendreau Decl., $\P\P$ 20-23

relax or "dude calm down" which
Karschamroon testified were not lawful
orders. Gendreau testified he did pot
believe Andy understood anything he
said so it would be difficult for him to
"resist" non lawful "commands".
Karschamroon testified Gendreau told
him "Danny I'm just going to Tase
him" and Karschamroom testified
Gendreau never told Andy he was
going to be tasered. Zimmerman said
Gendreau stepped to Andy's side and

Supporting Evidence: Exhibit A,

Deposition of Mark Zimmerman, pp.

108: 1-11/18-24, 110: 1-13/22-25, 111:
10-17/18-22, 112: 25, 121: 6-11/15-24,
123: 15-25, 240: 21-25, 242: 13-25,
243: 11-16, 244: 12-15, 246: 7-19;
Exhibit B, Deposition of Daniel

immediatly tasered him.

testimony. Officer Karschamroon testified that Officer Gendreau did warn Andy that he would be tased if he did not calm down, and Zimmerman testified that Officer Gendreau had his hands on top of Andy's hands for about 20 seconds before stepping to the side to taser him.

Karschamroon Depo., 331:6-12, Zimmerman Depo., 208:8-209:17

Karschamroon, pp. 397: 7-8; Exhibit D,

	Deposition of Richard Fukumoto,	
	M.D., pp. 90: 13-16, 258: 16-19, 259:	
	2-23, 260: 1-10, 261: 13-15, 264: 21-	
	24, 266: 13-22, 268:6-22, 280: 19-25,	
	281: 10-25, 282: 7-15, 283: 4-16/21-	
	23; Exhibit E, Deposition of Bua Thi	
	Phan, pp. 243.1: 16-18; 256.1: 2-5.	
311. Prior to deploying the taser,	311. Disputed: GGPD General Order	311. Plaintiffs do not dispute any
Officer Gendreau also attempted to	5.31 states the IVS Unit must be	material fact precluding summary
activate his audio recording system and	activated when a detention was going	judgment. The General Orders are
the one in his police unit, although he	to occur. Gendreau testified he saw	simply "guidelines," and the purpose of
was too far away for remote avtivation.	Karschamroon detaining Andy when he	the In-Car Video System (IVS) is to
Based on the nature of the call and	arrived yet failed to activate his IVS	provide an accurate, unbiased
rapidly evolving events, activating a	Unit; Karschamroon testified he	audiovisual record of enforcement
recorder or his in-unit video during this	thought IVS Unit activation was	related and non-criminal incidents that
incident was "not at the forefront" of	completely within his discretion. No	will enhance criminal prosecutions and
Officer Karschamroon's thoughts.	where in the GGPD General Orders	limit civil liabilities. The policy is non-
311. Karschamroon Decl., ¶ 41;	does it indicate "rapidly evolving	punitive in nature, and no disciplinary
Gendreau Decl., ¶ 20	events" warrant ignoring orders. The	action for violations of this policy will
	fact Gendreau claims to have attempted	be proposed unless the employee
	to activate his IVS Unit shows he had	refuses either actively or passively, as

	time and should have called for a	demonstrated by repeated instances of
		• •
	supervisor and medics before tasering	his/her failure. Summoning Fire
	Andy as required by	Department Paramedics before the use
	GGPD General Order 2.25. Further,	of a Taser is only recommended, if
	given the major credibility issues of all	practical, under the circumstances.
	involved officers Plaintiffs do not	General Order 2.24, 5.31, General
	believe the Court should not accept the	Order, "Statement by the Chief of
	IVS recordings were destroyed. GGPD	Police"
	General Order 5.31 states if IVS fails to	
	activate a work order must be	
	completed and Gendreau never did the	
	required paperwwork.	
	Supporting Evidence: Exhibit C,	
	Deposition of Richard Gendreau, pp.	
	97-98, 109: 20-23; Exhibit H, GGPD	
	General Order 2.24, 5.31.	
312. Officer Gendreau was trained that	312. Disputed: Gendreau testified he	312. Plaintiff's evidence does not
one of the best ways to get a subject on	believed that Andy was under the	constitute a genuine issue of material
the ground is to tase them in the leg.	influence of a Central Nervous System	fact precluding summary judgment; it is
His goal was to take Andy into custody	stimulant before he tasered Andy and	immaterial in light of Andy's actual
without any further risk of injury to	knew and had been trained that tasering	resistance while being detained, and the

Andy, Officer Karschamroon or himself.

312. Gendreau Decl., ¶ 22

Andy could cause his immediate death. Given theses facts it is difficult to believe Gendreau did not believe to injure Andy. Further, GGPD General Orders state a medic and supervisor should be called prior to tasering a subject. Gendreau testified he tried to activate his IVS and Lux testified it would have take 1-3 seconds to call for a medic and supervisor. Gendreau said Andy was not resisting, being aggressive or looking like would flee when he wass tasered so there was no rush to taser Andy. Andy was therefore a non comabative subject per GGPD General Order 2.6 and Lux testified he trained his students including Gendreau not taser such subjects.

Karschamroon testified he saw no reason to take out any weapons against Andy and had no idea why Gendreau

totality of the circumstances confronting the officers during that detention. Officer Karschamroon testified that he did not feel it was necessary to take out any weapon only up to the point of placing the first handcuff on Andy's wrist. Officer Gendreau testified that Andy's conduct and appearance was indicative of someone who potentially is going to throw a punch. Plaintiffs' misrepresent the testimony of Benedict Lux, which was based on incomplete hypothetical questioning and not on facts relevant to this case.

Karschamroon Depo., 251:21-252:6, Gendreau Depo., 178:5-16.

was tasering Andy. Lux testified Karshamroon as the first officer on scene should have detennined why Gendreau was going to taser Andy. Supporting Evidence: Exhibit B, Deposition of Daniel Karschamroon, pp. 251: 17-25, 252: 1-118, 355: 21-24, 357: 3-18, 360: 1-6; Exhibit C, Deposition of Richard Gendreau, pp. 96: 1-16,174: 14-17; 176: 1-25, 177: 1-10, 182: 2-23, 187: 1-8, 220: 1-24, 225: 17-24, 266: 1-10, 327: 17-22, 328: 1-14/20-25, 329: 1-18; Exhibit F, Deposition of Benedict Lux, pp. 176: 15-22,177:7-20,178:5-14,179: 5-12, 204: 1-25, 205: 1-15, 206: 9-22, 209: 1-25, 210: 8-18, 211: 9-11, 212: 13-18, 244: 14-25, 247: 21-25, 252: 21-25, pp. 253: 1-3/5-12, 254, 255: 1-5/12-15; Exhibit H, GGPD General Order 2.24, 2.6; Exhibit J, Karschamroon GGPD

	Internal Affairs Interview, pp. 15.	
313. Once Andy was tased, he began to	313. Disputed: Zimmerman testified	313. Plaintiff's evidence does not
fall backward toward Officer	Andy fell hard to the ground after the	constitute a genuine issue of material
Karschamroon, who caught him and	tasering like a "sack of potatoes" and	fact precluding summary judgment; it is
laid him forward onto the ground.	saw nothing consistent with Andy	immaterial in light of Andy's actual
Andy also released his grip, and once	being gently placed on the ground.	resistance while being detained, and the
the taser cycle stopped, the officers	Zimmeman testified Andy was a fat	totality of the circumstances
were able to bring his left arm behind	guy and the officers could not have	confronting the officers during that
his back and apply the other handcuff to	placed him gently down if they wanted.	detention. Zimmerman has had no
secure his arms.	Zimmerman testified when Andy hit	medical training. Although his eyesight
313. Karschamroon Decl., ¶ 26;	the ground was dead and never moved	is admittedly impaired, he never wears
Gendreau Decl., $\P\P$ 24, 25	again on his own.	his prescription contact lens.
	Supporting Evidence: Exhibit A,	Zimmerman observed the incident from
	Deposition of Mark Zimmerman, pp.	a distance of approximately 40-50 feet
	108: 1-11/18-24, 110: 1-13, 240: 21-	and could not tell what small, detailed
	25, 242: 13-25,243: 11-16.	movements were occurring.
		Zimmerman testified that it was
		possible that Andy was breathing after
		being tased and that he just did not
		observe it, and that his belief that Andy
		was dead is not based on any actual

		evidence
		Zimmerman Depo., pp. 22:3-7, 162:11-
		19, 180:20-21; 201:6-12, 293:23-
		294:12
314. At approximately 11:38 a.m.,	314. Disputed: GG Fire Department	314. Plaintiff's evidence does not
Officer Gendreau advised over his	paramedics were not dispached until	constitute a genuine issue of material
police radio that the situation was	11:39:38. Per Lux and GGPD General	fact precluding summary judgment; it
stable, but that Andy had been tased and	Order 2.24 states medics should be	remains undisputed that GG Fire
he requested Garden Grove Fire	called before any tasering and a	Department paramedics were promptly
Department to respond to examine	supervisor must be called before a	dispatched after Andy was tased.
Andy per their protocol when a subject	tasering. Sergeant Wagner was not	General Orders are guidelines and not
is tased. At approximately 11:39 a.m.,	requested until 11:46.	an independent mechanism to pursue
Garden Grove Fire Department was	Supporting Evidence: Exhibit D,	civil liability.
dispatched to the incident scene in	Deposition of Richard Fukumoto,	General Orders, "Statement by the
reference to Andy being tased.	M.D., pp. 90: 13-16, 282: 7-15, 283:4-	Police Chief"
314. Karschamroon Decl., ¶ 27;	16/21-23; Exhibit F, Deposition of	
Gendreau Decl., ¶ 26; Exhibit 3	Benedict Lux, pp. 249: 15-25, 250: 9-	
Dispatch CAD	10, 260: 13-25, 262: 15-25, 263: 1-3;	
	Exhibit H, GGPD General Order 2.24;	
	Exhibit K., Sergeant Wagner's report.	
315. As he was handcuffed and on the	315. Disputed: Zimmerman testified	315. 315. Plaintiff's evidence does not

ground, Andy looked in various directions. Officer Gendreau continued to instruct him to relax, and informed him they were in the process of getting him medical attention. When asked if he was doing okay, Andy remained unresponsive but continued to look around.

315. Karschamroon Decl., ¶ 30; Gendreau Decl., ¶ 27

Andy fell hard to the ground after the tasering like a "sack of potatoes" and saw nothing consistent with Andy being gently placed on the ground. Zimmeman testified Andy was a fat guy and the officers could not have placed him gently down if they wanted. Zimmerman testified when Andy hit the ground was dead and never moved again on his own. Karschamroon testifed Gendreau opened up Andy's eyes and Karschamroon could not tell if Andy was breathing. Zimmerman said he saw Gendreau slapping Andy's face and saying "to stop faking". Bua Phan also testified Andy died immediately after the tasering. Dr. Fukumoto testified the evidence is consistent with Andy being dead immediately after he saw tasered. Supporting Evidence: Exhibit A,

constitute a genuine issue of material fact precluding summary judgment; it is immaterial in light of the undisputed fact that GG Fire Department Paramedics were promptly summoned. In any event, Zimmerman has had no medical training, and although his eyesight is admittedly impaired, he never wears his prescription contact lens. Zimmerman observed the incident from a distance of approximately 40-50 feet and could not tell what small, detailed movements were occurring. Zimmerman testified that it was possible that Andy was breathing after being tased and that he just did not observe it, and that his belief that Andy was dead is not based on any actual evidence. Dr. Fukumoto testified that he has no way of knowing when Andy died and that he relies on

	Deposition of Mark Zimmerman, pp.	the physician's death pronouncement as
	108: 1-11/18-24, 110: 1-13/22-25, 111:	to the time of death.
	10-17/18-22, 112: 25, 121: 6-11/15-	Zimmerman Depo., 22:3-7, 162:11-19,
	24,123: 15,- 25, 240: 21-25, 242: 13-	180:20-21; 201:6-12, 293:23-294:12;
	25, 243: 11-16,244: 12-15,246: 7-19;	Fukumoto Depo., 187:19-188:5,
	Exhibit B, Deposition of Daniel	258:7-259:25
	Karschamroon, pp. 397: 7-8; Exhibit D,	230.7-239.23
	Deposition of Richard Fukumoto,	
	M.D., pp. 90: 13-16, 258: 16-19, 259:2-	
	23, 260: 1-10, 261: 13-15, 264: 21-24,	
	266: 13-22, 268:6-22, 280: 19-25, 281:	
	10-25, 282: 7-15, 283: 4-16/21-23;	
	Exhibit E, Deposition of Bua Thi Phan,	
	pp. 243.1: 16-18; 256.1: 2-5.	
316. After the tasing, a third officer	316. Disputed: Zimmerman testified	316. Plaintiff's evidence does not
arrived on scene, Officer Amir El-Farra.	Andy fell hard to the ground after the	constitute a genuine issue of material
The officers decided to roll Andy over	tasering like a "sack of potatoes" and	fact precluding summary judgment; it is
on his back to observe him from the	saw, nothing consistent with Andy	immaterial in light of the undisputed
front. His eyes were closed, but a check	being gently placed on the ground.	fact that GG Fire Department
by Officer Gendreau found they were	Zimmeman testified Andy was a fat	Paramedics were promptly summoned.
dilated. Because of that and Andy's	guy and the officers could not have	In any event, Zimmerman has had no

labored breathing, the officers decided to sit him up against Officer El-Farra's leg, thinking it might help with his breathing and help snap him out of the trance he appeared to be in.

316. Karschamroon Decl., $\P\P$ 29-34; Gendreau Decl., $\P\P$ 31-32; El-Farra Decl., $\P\P$ 6-8

placed him gently down if they wanted. Zimmerman testified when Andy hit the ground was dead and never moved again on his own. Zimmerman testified when the police rolled Andy against an officers legs he could clearly see Andy chest and stomach and he was clearly not breathing. Karschamroon testifed Gendreau opened up Andy's eyes and Karschamroon could not tell if Andy was breathing. Zimmerman said he saw Gendreau slapping Andy's face and saying "to stop faking". Bua Phan also testified Andy died immediately after the tasering.

Dr. Fukumoto testified the evidence is consistent with Andy being dead immediately after he saw tasered.

Supporting Evidence: Exhibit A,

Deposition of Mark Zimmennan, pp.

108: 1-11/18-24, 110: 1-13/22-25, 111:

medical training, and although his eyesight is admittedly impaired, he never wears his prescription contact lens. Zimmerman observed the incident from a distance of approximately 40-50 feet and could not tell what small, detailed movements were occurring. Zimmerman testified that it was possible that Andy was breathing after being tased and that he just did not observe it, and that his belief that Andy was dead is not based on any actual evidence. Dr. Fukumoto testified that he has no way of knowing when Andy died and that he relies on the physician's death pronouncement as to the time of death.

	10-17/18-22,112: 25, 121: 6-11/15-24,	
	123: 15-25; 240: 21-25; 242: 13-25,	
	243: 11-16, 244: 12-15, 246: 7-19;	
	Exhibit B, Deposition of Daniel	
	Karschamroon, pp. 397: 7-8; Exhibit D,	
	Deposition of Richard Fukumoto,	
	M.D., pp. 90: 13-16, 258: 16-19, 259:	
	2-23, 260: 1-10, 261: 13-15, 264: 21-	
	24,266: 13-22, 268:6-22, 280: 19-25,	
	281: 10-25, 282: 7-15, 283: 4-16/21-	
	23; Exhibit E, Deposition of Bua Thi	
	Phan, pp. 243.1: 16-18; 256.1: 2-5.	
317. Given Andy's dilated pupils in	317. Disputed: Gendreau testified he	317. Plaintiff's evidence does not
bright sunlight and his rapid pulse,	believed that Andy was under the	constitute a genuine issue of material
Officer Gendreau did consider that he	influence of a Central Nervous System	fact precluding summary judgment; it is
may be under the influence of a	stimulant before he tasered Andy and	immaterial in light of Andy's actual
controlled substance, but he never had	knew and had been trained that tasering	resistance while being detained, and the
the opportunity to do a full evaluation.	Andy could cause his immediate death.	totality of the circumstances
317. Gendreau Decl., ¶ 37	Given theses facts it is difficult to	confronting the officers during that
	believe Gendreau did not believe to	detention. Officer Karschamroon
	injure Andy. Further, GGPD General	testified that he did not feel it was

Orders state a medic and supervisor should be called prior to tasering a subject. Gendreau testified he tried to activate his IVS and Lux testified it would have take 1-3 seconds to call for a medic and supervisor. Gendreau said Andy was not resisting, being aggressive or looking like would flee when he wass tasered so there was no rush to taser Andy. Andy was therefore a non comabative subject per GGPD General Order 2.6 and Lux testified he trained his students including Gendreau not taser such subjects.

Karschamroon testified he saw no reason to take out any weapons against Andy and had no idea why Gendreau was tasering Andy. Lux testified Karshamroon as the first officer on scene should have detennined why Gendreau was going to taser Andy.

necessary to take out any weapon only up to the point of placing the first handcuff on Andy's wrist. Officer Gendreau testified that Andy's conduct and appearance was indicative of someone who potentially is going to throw a punch. Plaintiffs' misrepresent the testimony of Benedict Lux, which was based on incomplete hypothetical questioning and not on facts relevant to this case.

Karschamroon Depo., 251:21-252:6, Gendreau Depo., 178:5-16.

	Supporting Evidence: Exhibit B,	
	Deposition of Daniel Karschamroon,	
	pp. 251: 17-25, 252: 1-118, 355: 21-24,	
	357: 3-18, 360: 1-6; Exhibit C,	
	Deposition of Richard Gendreau, pp.	
	96: 1-16,174: 14-17; 176: 1-25, 177: 1-	
	10, 182: 2-23, 187: 1-8, 220: 1-24, 225:	
	17-24, 266: 1-10, 327: 17-22, 328: 1-	
	14/20-25, 329: 1-18; Exhibit F,	
	Deposition of Benedict Lux, pp. 176:	
	15-22,177:7-20,178:5-14,179: 5-12,	
	204: 1-25, 205: 1-15, 206: 9-22, 209:	
	1-25, 210: 8-18, 211: 9-11, 212: 13-18,	
	244: 14-25, 247: 21-25, 252: 21-25, pp.	
	253: 1-3/5-12, 254, 255: 1-5/12-15;	
	Exhibit H, GGPD General Order 2.24,	
	2.6; Exhibit J, Karschamroon GGPD	
	Internal Affairs Interview, pp. 15.	
318. As Andy was seated upright and	318. Disputed: Zimmerman testified	318. Plaintiff's evidence does not
leaning against Officer El-Farra's leg,	Andy fell hard to the ground after the	constitute a genuine issue of material
his breathing was observed to be	tasering like a "sack of potatoes" and	fact precluding summary judgment; it is

labored but no officer believed the situation to be critical. Officer

Karschamroon saw nothing to suggest a life-threatening situation, Officer

Gendreau "felt comfortable" upon hearing the approach of the medics, and Officer El-Farra could see Andy's chest rising and falling.

318. Karschamroon Decl., ¶ 35;
Gendreau Decl., ¶¶ 33-34; El-Farra
Decl., ¶¶10

saw, nothing consistent with Andy being gently placed on the ground. Zimmeman testified Andy was a fat guy and the officers could not have placed him gently down if they wanted. Zimmerman testified when Andy hit the ground was dead and never moved again on his own. Zimmerman testified when the police rolled Andy against an officers legs he could clearly see Andy chest and stomach and he was clearly not breathing. Karschamroon testifed Gendreau opened up Andy's eyes and Karschamroon could not tell if Andy was breathing. Zimmerman said he saw Gendreau slapping Andy's face and saying "to stop faking". Bua Phan also testified Andy died immediately after the tasering.

Dr. Fukumoto testified the evidence is consistent with Andy being dead

immaterial in light of the undisputed fact that GG Fire Department Paramedics were promptly summoned. In any event, Zimmerman has had no medical training, and although his eyesight is admittedly impaired, he never wears his prescription contact lens. Zimmerman observed the incident from a distance of approximately 40-50 feet and could not tell what small, detailed movements were occurring. Zimmerman testified that it was possible that Andy was breathing after being tased and that he just did not observe it, and that his belief that Andy was dead is not based on any actual evidence. Dr. Fukumoto testified that he has no way of knowing when Andy died and that he relies on the physician's death pronouncement as to the time of death.

immediately after he saw tasered. Dr. Fukumoto also testified that if officers did see labored or heavy breathing they should have known Andy was in cardiad distress and taken off the handcuffs at a minimum. Supporting Evidence: Exhibit A, Deposition of Mark Zimmerman, pp.108: 1-11/18-24, 110: 1-13/22-25, 111: 10- 17/18-22, 112: 25, 121: 6-11/15-24, 123: 15-25, 240: 21-25, 242: 13-25, 243: 11-16, 244: 12-15, 246: 7-19; Exhibit B, Deposition of Daniel Karschamroon, pp. 397: 7-8; Exhibit D, Deposition of Richard Fukumoto, M.D., pp. 90: 13-16, 258: 16-19, 259: 2-23, 260: 1-10, 261: 13-15, 264: 21-24, 266: 13-22, 268:6-22, 280: 19-25, 281: 10-25, 282: 7-15, 283: 4-16/21-23; Exhibit E, Deposition of Bua Thi Phan, pp. 243.1: 16-18; 256.1: 2-5.

319. Officer Gendreau asked Officer	319. Zimmerman testified all police	319. Plaintiff's evidence does not
El-Farra to stay with Andy as he and	officers arrived outside until the	constitute a genuine issue of material
Officer Karschamroon ascertained the	paramedics arrived looking	fact precluding summary judgment; it is
welfare or condition of the calling party	increasingly more concerned because	immaterial in light of the undisputed
or family considering the nature of the	Andy was not moving. Per Exhibit 3	fact that GG Fire Department
call and the need to determine if anyone	of Defendants Motion El-Farra was on	Paramedics were promptly summoned.
had been injured or attacked by Andy.	scene at 11:38 and Paramedics did not	In any event, Zimmerman "thinks"
Officer El-Farra estimates that he was	arrive until 11:44 so El-Farra was on	Officers Karschamroon and Gendreau
in front of the residence, with Andy, for	scene for several minutes prior to the	remained with Andy until the
approximately 15 to 20 seconds	paramedics arrival.	paramedics arrived but concedes he lost
thereafter prior to medics arriving.	Supporting Evidence: Exhibit A,	track of them.
319. Karschamroon Decl., ¶¶ 35-36;	Deposition of Mark Zimmerman, pp.	Zimmerman Depo., 264:18-23, 267:12-
Gendreau Decl., ¶ 33-34; El-Farra	123: 15-25,246: 7-19, 251: 4, 264: 18-	14, 307:21-25
Decl., ¶ 11-12	25,265: 5-14118-25,267: 6-8.; Defense	
	Exhibit 3, Dispatch CAD.	
320. Officers Gendreau and	320. Disputed: Zimmerman testified	320. Plaintiff's evidence does not
Karschamroon then contacted Andy's	all police officers arrived outside until	constitute a genuine issue of material
family inside the residence, but it	the paramedics arrived looking	fact precluding summary judgment; it is
appeared the only individual who	increasingly more concerned because	immaterial in light of the undisputed
sustained an injury was Plaintiff Bua	Andy was not moving. Per Exhibit 3 of	fact that GG Fire Department
Thi Phan, who had sustained a scraped	Defedants Motion EI-Farra was on	Paramedics were promptly summoned.

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elbow. Her injury was measured and photographed.

320. Karschamroon Decl., ¶¶37-38; Gendreau Decl., ¶ 35; Exhibit 4, Photograph of Injury; Exhibit 5, Photograph of Screen scene at 11:38 and Paramedics did not arrive until 11:44 so EI-Farra was on scene for minutes prior to the paramedics arrival. There has been no testimony by Karschamroon or Gendreau that they ever personally observed any injury nor photographed any injury to Bua Phan so there is a complete lack of foundation for this "new" testimony. Again, another example of recreating history by Karschamroon and Gendreau and another reason to disbelieve both of their Declarations. Further, the attached photographs were submitted late and beyond the Motion Cut-Off time. Supporting Evidence: Exhibit A, Deposition of Mark Zimmerman, pp. 123: 15-25,246: 7-19, 251: 4,264: 18In any event, Zimmerman "thinks"

Officers Karschamroon and Gendreau remained with Andy until the paramedics arrived but concedes he lost track of them. Further, Plaintiffs do not deny that Bua Thi Phan was injured in a struggle with Andy.

Zimmerman Depo., 264:18-23, 267:12-14, 307:21-25

25,265: 5-14/18-25,267: 6-8.; Defense

Exhibit 3, Dispatch CAD.

321. An approaching medic was informed by Officer El-Farra about the tasing and Andy's labored breathing. The medic checked for Andy's pulse and informed Officer El-Farra that he needed to start CPR. This took Officer El-Farra completely by surprise. When he had looked away from Andy to speak to the medic, Andy had been breathing. At no time did Officer El-Farra hear or see Andy stop breathing, or notice any other physical difficulties.

321. El-Farra Decl., ¶ *13-17*

321. **Disputed:** Zimmerman testified Andy fell hard to the ground after the tasering like a "sack of potatoes" and saw nothing consistent with Andy being gently placed on the ground. Zimmerman testified Andy was a fat guy and the officer could not have placed him gently down if they wanted. Zimmerman testified when Andy hit the ground was dead and never moved again on his own. Zimmerman testified when the police rolled Andy against an officers legs he could clearly see Andy chest and stomach and he was clearly not breathing. Karschamroon testified Gendreau opened up Andy's eyes and Karschamroon could not tell if Andy was breathing. Zimmerman said he saw Gendreau slapping Andy's face and saying "to stop faking". Bua Phan also testified Andy died immediately

321. Plaintiff's evidence does not constitute a genuine issue of material fact precluding summary judgment; it is immaterial in light of the undisputed fact that GG Fire Department Paramedics were promptly summoned. In any event, Zimmerman has had no medical training, and although his eyesight is admittedly impaired, he never wears his prescription contact lens. Zimmerman observed the incident from a distance of approximately 40-50 feet and could not tell what small, detailed movements were occurring. Zimmerman testified that it was possible that Andy was breathing after being tased and that he just did not observe it, and that his belief that Andy was dead is not based on any actual evidence. Dr. Fukumoto testified that he has no way of knowing

after tasering.

Dr. Fukumoto testified the evidence is consistent with Andy being dead immediately after he saw tasered.

Dr. Fukumoto also testified that if officers did see labored or heavy breathing they should have known

Andy was in cardiad distress and taken off the handcuffs at a minimum.

Supporting Evidence: Exhibit A,
Deposition of Mark Zimmerman,
pp.108: 1-11/18-24, 110: 1-13/22-25,
111: 10- 17/18-22, 112: 25, 121: 611/15-24, 123: 15-25, 240: 21-25, 242:

Karschamroon, pp. 397: 7-8; Exhibit D,

13-25, 243: 11-16, 244: 12-15, 246: 7-

19; Exhibit B, Deposition of Daniel

Deposition of Richard Fukumoto,

M.D., pp. 90: 13-16, 258: 16-19, 259:

2-23, 260: 1-10, 261: 13-15, 264: 21-

24, 266: 13-22, 268:6-22, 280: 19-25,

when Andy died and that he relies on the physician's death pronouncement as to the time of death.

	281: 10-25, 282: 7-15, 283: 4-16/21-	
	23; Exhibit E, Deposition of Bua Thi	
	Phan, pp. 243.1: 16-18; 256.1: 2-5.	
322. An approaching medic was	322. Disputed: Upon hitting the	322. Plaintiff's evidence does not
informed by Officer El-Farra about the	ground, immediatley after being	constitute a genuine issue of material
tasing and Andy's labored breathing.	tasered, Andy was already lifeless.	fact precluding summary judgment; it is
The medic checked for Andy's pulse		immaterial in light of the undisputed
and informed Officer El-Farra that he	Mark Zimmerman, pp. 294:6-	fact that GG Fire Department
needed to start CPR. This took Officer	15.Officer Karschamroon cannot even	Paramedics were promptly summoned.
El-Farra completely by surprise. When	recall whether Andy was breathing	In any event, Zimmerman has had no
he had looked away from Andy to	after the officers finished propping	medical training, and although his
speak to the medic, Andy had been	Andy's body against Officer EI-Farra's	eyesight is admittedly impaired, he
breathing. At no time did Officer El-	legs. Supporting Evidence: Exhibit B,	never wears his prescription contact
Farra hear or see Andy stop breathing,	Deposition of Daniel Karschamroon,	lens. Zimmerman observed the
or notice any other physical difficulties.	pp.397:7-8.While Andy was propped	incident from a distance of
322. El-Farra Decl., ¶ 13-17	against the officer's leg, his chest was	approximately 40-50 feet and could not
	not moving and he was not breathing	tell what small, detailed movements
	heavily or otherwise.	were occurring. Zimmerman testified
	Supporting Evidence: Exhibit A,	that it was possible that Andy was
	Deposition of Mark Zimmerman,	breathing after being tased and that he
	pp.124:17-25.	just did not observe it, and that his

		belief that Andy was dead is not based
		on any actual evidence. Dr. Fukumoto
		testified that he has no way of knowing
		when Andy died and that he relies on
		the physician's death pronouncement as
		to the time of death.
		Zimmerman Depo., 22:3-7, 162:11-19,
		180:20-21; 201:6-12, 293:23-294:12;
		Fukumoto Depo., 187:19-188:5,
		258:7-259:25
323. After checking the house, the	323. Disputed: Zimmerman testified	323. Plaintiff's evidence does not
Officers Gendreau and Karschamroon	all police officers arrived outside until	constitute a genuine issue of material
started toward the front door. They	the paramedics arrived looking	fact precluding summary judgment; it is
could then see the paramedics	increasingly more concerned because	immaterial in light of the undisputed
performing CPR on Andy. This was a	Andy was not moving. Zimmerman	fact that GG Fire Department
"shock" and "surprise" to both officers.	testified Andy fell hard to the ground	Paramedics were promptly summoned.
323. Karschamroon Decl., $\P 939$;	after the tasering like a "sack of	In any event, Zimmerman has had no
Gendreau Decl., ¶ 38	potatoes" and saw nothing consistent	medical training, and although his
	with Andy being gently placed on the	eyesight is admittedly impaired, he
	ground. Zimmeman testified Andy was	never wears his prescription contact
	a fat guy and the officers could not	lens. Zimmerman observed the

have placed him gently down if they wanted. Zimmerman testified when Andy hit the ground was dead and never moved again on his own. Zimmerman testified when the police rolled Andy against an officer's legs he could clearly see Andy chest and stomach and he was clearly not breathing. Karschamroon testifed Gendreau opened up Andy's eyes and Karschamroon could not tell if Andy was breathing. Zimmerman said he saw Gendreau slapping Andy's face and saying "to stop faking". Bua Phan also testified Andy died immediately after the tasering.

Dr. Fukumoto testified the evidence is consistent with Andy being dead ' immediately after he saw tasered.

Dr. Fukumoto also testified that if officers did see labored or heavy

incident from a distance of approximately 40-50 feet and could not tell what small, detailed movements were occurring. Zimmerman testified that it was possible that Andy was breathing after being tased and that he just did not observe it, and that his belief that Andy was dead is not based on any actual evidence. Dr. Fukumoto testified that he has no way of knowing when Andy died and that he relies on the physician's death pronouncement as to the time of death.

	breathing they should have known	
	Andy was in cardiad distress and taken	
	off the handcuffs at a minimum.	
	Supporting Evidence: Exhibit A,	
	Deposition of Mark Zimmerman, pp.	
	108: 1-11118-24, 110: 1-13/22-25,	
	111:10-17/18-22,112: 25,121: 6-11/15-	
	24,123: 15-25,240: 21-25,242: 13-25,	
	243: 11-16,244: 12-15,246: 7-19;	
	Exhibit B, Deposition of Daniel	
	Karschamroon, pp. 397: 7-8; Exhibit 0,	
	Deposition of Richard Fukumoto,	
	M.D., pp. 90: 13-16,258: 16-19,259: 2-	
	23, 260: 1-10,261: 13-15,264: 21-	
	24,266:13-22,268:6-22,280: 19-25,281:	
	10-25,282: 7-15,283: 4-16/21-23;	
	Exhibit E, Deposition of Bua Thi Phan,	
	pp. 243.1: 16-18; 256.1: 2-5.	
324. Although the paramedics rendered	324. Disputed: Dr. Fukumoto testified	324. Plaintiff's evidence does not
emergency care and transported to the	no drug played any role in Andy's	constitute a genuine issue of material
hospital, Andy Tran did not survive.	death and none where at fatal levels.	fact precluding summary judgment; it is

Toxicology results revealed substantial	He testified Andy died from being	immaterial in light of Andy's actual
levels of Diphenhydramine and	tasered and the evidence was consistent	resistance while being detained, the
Trihexylphenidyl in his system at the	with Andy dying immediatly after	totality of the circumstances
time of death.	being hit with the taser. Andy was in	confronting the officers during that
324. Exhibit 6, Toxicology Report	full cardiac arrest when the paramedics	detention, and in light of the undisputed
	arrived and his eyes were fixed and	fact that GG Fire Department
	dilated. Dr. Fukumoto has been	Paramedics were promptly summoned.
	qualified as an expert in interpreting	In any event, the Plaintiffs' do not
	toxicology results in Courts.	dispute the Defendants' UMF, but Dr.
	Supporting Evidence: Exhibit D,	Fukumoto opinion that the tasering was
	Deposition of Richard Fukumoto,	a factor in Andy's death was because he
	M.D., pp. 63: 1-8, 66: 18-22, 67: 4-5,	already had a bad heart and liver. Dr.
	90: 13-16, 141: 5-25, 142: 6-7, 143: 2-	Fukumoto testified that he has no way
	3, 228: 13-25, 229: 20-25, 239: 10-	of knowing when Andy died and that
	14/19-25, 240: 1-25,243: 1-25, 245:	he relies on the physician's death
	17-25, 260: 1-10, 283: 4-16/21-23,	pronouncement as to the time of death.
	296: 1-7, 304: 1-3/16-18, 305: 8-25,	Fukumoto Depo., 187:19-188:5,
	306: 1-2/10-14, 307: 1-8/22-25, 308: 5-	206:23 - 207:11, 258:7-259:25
	7, 309: 1-5/18-22, 347: 1-4, 355: 2-9.	
325. The Coroner listed the cause of	325. Disputed: Dr. Fukumoto testified	325. Plaintiff's evidence does not
death as "Cardiac arrhythmia during	no drug played any role in Andy's	constitute a genuine issue of material

struggle with law enforcement due to dilated hyertropic cardiomyopathy with diphenhydramine and trihexylphenidl intoxication."

325. Exhibit 7, Autopsy Report

death and none where at fatal levels. He testified Andy died from being tasered and the evidence was consistent with Andy dying immediatly after being hit with the taser. Andy was in full cardiac arrest when the paramedics arrived and his eyes were fixed and dilated. Dr. Fukumoto has been qualified as an expert in interpreting toxicology results in Courts. Dr. Fukumoto testified he wass provided an incorrect history including being told Andy was breathing when paramedicas arrived and was never told exactly what type of struggle Andy was alleged to have been involved in with police. After being provided the true facts, including · Dr. Karschamroon's deposition, Dr. Fukumoto concluded Andy died from the tasering. The Defense objected to Dr. Fukumoto

fact precluding summary judgment; it is immaterial in light of Andy's actual resistance while being detained, the totality of the circumstances confronting the officers during that detention, and in light of the undisputed fact that GG Fire Department Paramedics were promptly summoned. In any event, the Plaintiffs' do not dispute the Defendants' UMF, but Dr. Fukumoto opinion that the tasering was a factor in Andy's death was because he already had a bad heart and liver. Dr. Fukumoto testified that he has no way of knowing when Andy died and that he relies on the physician's death pronouncement as to the time of death. Fukumoto Depo., 187:19-188:5, 206:23 - 207:11, 258:7-259:25

reading the Internal Affair transcripts of Officer Gendreau and Karschamroon even though Dr. Fukumoto thought they could define the facts. Supporting Evidence: Exhibit D, Deposition of Richard Fukumoto, M.D., pp. 63: 1-8, 66: 18-22, 67: 4-5, 90: 13-16, 141: 5-25, 142: 6-7, 143: 2-3, 228: 13-25, 229: 20-25, 239: 10-14/19-25, 240: 1-25, 243: 1-25, 245: 17-25, 260: 1-10, 283: 4-16/21-23, 296: 1-7, 304: 1-3-16-18, 305: 8-25, 306: 1-2/10-14, 307: 1-8/22-25, 308: 5-7, 309: 1-5/18-22, 347: 1-4, 355: 2-9.

PLAINTIFFS' UNDISPUTED FACTS	DEFENDANTS' REPLY
& EVIDENCE	
326. On September 3, 2008, Mr. Andy Tran	326. This is not a material fact creating a
(hereinafter referred to as "Andy" since every	genuine issue precluding summary judgment.
witness identified him as Andy) lived at 13253	However, undisputed for the purposes of the
Barnett Way in the City of Garden Grove.	present Motion.
Supporting Evidence: Exhibit A, Deposition	
of Mark Zimmerman, pp. 18: 9-23, 19: 1-8.	
327. 13253 Barnett way is located at the	327. This is not a material fact creating a
corner of Paloma Drive and Barnett Way.	genuine issue precluding summary judgment.
Supporting Evidence: Exhibit A, Deposition	However, undisputed for the purposes of the
of Mark Zimmerman, pp. 18; 9-23, 19:1-8.	present Motion.

328. Independent Witness Mark Zimmerman lived directly acrtoss the street from Mr. Tran's residence on the opposite corner of Paloma Drive and Barnett Way.

Supporting Evidence: Exhibit A, Deposition of Mark Zimmerman, pp. 18; 9-23, 19"1-8/

328. This is not a material fact creating a genuine issue precluding summary judgment. However, undisputed that Mark Zimmerman lives at the stated address. Disputed to the extent Zimmerman witnessed the incident in a material way. Nothing in Zimmerman's testimony disputes the officers' account of Andy's resistance other than his own speculation. Zimmerman testified that he could see subtle movement going on between the officers and Andy and that there could have been a "whole 'nother [sic] set of scenarios going on" that he did not see. He could not hear what was being said, and although his eyesight is admittedly impaired, he never wears his prescription contact lens. Zimmerman observed the incident from a distance of approximately 40-50 feet could not tell what small, detailed movements were occurring. He does not know whether the officers tried to

220 M 1 7' 1 11' 1 C	220 71: :
329. Mark Zimmerman had lived across from	329. This is not a material fact creating a
the Tran's for several year and although did not	genuine issue precluding summary judgment.
have a real relationship with the Tran's he could	However, undisputed for the purposes of the
see the Tran's were a close knit family and	present Motion.
would often see Mr. Tran outside playing with	
his son, doing chores or sitting down.	
Supporting Evidence: Exhibit A, Deposition	
of Mark Zimmerman, pp.23, 1-23, 24:2-12.	
330. Mr. Zimmerman testified that sometimes	330. This is not a material fact creating a
Andy appeared normal and other times he	genuine issue precluding summary judgment.
appeared a bit mentally unstable.	However, undisputed for the purposes of the
Supporting Evidence: Exhibit A, Deposition	present Motion.
of Mark Zimmerman, pp.33:1-25, 34:1-19	
331. Had never felt threatened by Andy or seen	331. This is not a material fact creating a
him act violently.	genuine issue precluding summary judgment.
Supporting Evidence: Exhibit A, Deposition	However, undisputed for the purposes of the
of Mark Zimmerman, pp. 36:22-25, 37:1-4.	present Motion.
332. At approximately 11:30 a.m., Mr.	332. This is not a material fact creating a
Zimmerman drove his utility truck from his	genuine issue precluding summary judgment.
work to his home and turned left from Paloma	However, undisputed for the purposes of the
Drive to Barnett Way passing directly past Mr.	present Motion.

Tran's house.	
Supporting Evidence: Exhibit A, Deposition	
of Mark Zimmerman, pp. 29:6-25.	
333. Mr. Zimmerman noticed Mr. Tran sitting	333. This is not a material fact creating a
on the curb in front of his house as he pulled up	genuine issue precluding summary judgment.
and parked his truck directly in front of his (Mr.	However, undisputed for the purposes of the
Zimmerman's house).	present Motion.
Supporting Evidence: Exhibit A, Deposition	
of Mark Zimmerman, pp. 28:11-21.	
334. When Mr. Zimmerman exited his truck he	334. This is not a material fact creating a
saw Mr. Tran get up from the curb and move to	genuine issue precluding summary judgment.
the grassy section of his lawn and go to his	However, undisputed for the purposes of the
knees and let out a moan or cry.	present Motion.
Supporting Evidence: Exhibit A, Deposition	
of Mark Zimmerman, pp. 30:11-25, 31:6-14.	
335. Because of Mr. Tran's behavior Mr.	335. This is not a material fact creating a
Zimmerman stayed near his truck to observe	genuine issue precluding summary judgment.
Mr. Tran.	However, undisputed for the purposes of the
Supporting Evidence: Exhibit A, Deposition	present Motion.
of Mark Zimmerman, pp, 36:1-21.	

336. Mr. Zimmerman watched as Mr. Tran got	336. This is not a material fact creating a
up and went towards the front door of Mr.	genuine issue precluding summary judgment.
Tran's house.	However, undisputed for the purposes of the
Supporting Evidence: Exhibit A, Deposition	present Motion.
of Mark Zimmerman, pp. 38:1018.	
337. Once on the front porch of his house Mr.	337. This is not a material fact creating a
Tran fully removed a screen which covered a	genuine issue precluding summary judgment.
window immediately adjacent to the front door.	However, Zimmerman testified that Andy
Supporting Evidence: Exhibit A, Deposition	"ripped off the screen."
of Mark Zimmerman, pp. 38:1-18	Zimmerman Depo., 167:11-20
338. Mr. Zimmerman could see Mr. Tran's	338. This is not a material fact creating a
father, Mr. Nam Tran, inside the house as well	genuine issue precluding summary judgment.
as an adult woman.	However, undisputed for the purposes of the
Supporting Evidence: Exhibit A, Deposition	present Motion.
of Mark Zimmerman, pp. 73:4-25, 74:9-16.	
339. Once Mr. Zimmerman saw Mr. Tran	339. This is not a material fact creating a
remove the screen he began walking across	genuine issue precluding summary judgment.
Barnett Way towards Mr. Tran's house and	However, undisputed for the purposes of the
began yelling "that's enough" and "stop".	present Motion.
Supporting Evidence: Exhibit A, Deposition	

of Mark Zimmerman, pp. 39:1-23, 40:1-16.	
340. Unbeknownst to Mr. Zimmerman Mr.	340. This is not a material fact creating a
Tran's father had called the Garden Grove	genuine issue precluding summary judgment.
Police Department and requested Mr. Tran be	However, Andy's father did more than request
taken to the hospital.	Andy be taken to the hospital. Officers were
Supporting Evidence: Defense Exhibit 3,	dispatched in response to the call were informed
Dispatch CAD.	that Andy was also crazy, with weapons, and
	that he had committed an assault.
	Exhibit 2, Transcript/Audio 911 Recording;
	Exhibit 3, Dispatch CAD.
341. Three (3) officers were dispatched to	341. This is not a material fact creating a
Andy's house as a result of Andy's father's 911	genuine issue precluding summary judgment.
call.	However, undisputed for the purposes of the
Supporting Evidence: Defense Exhibit 2,	present Motion.
Transcript/ Audio 911; Defense Exhibit 3,	
Dispatch CAD.	
342. The dispatched Officers were Richard	342. This is not a material fact creating a
Gendreau, Daniel Karschamroon and Amir El-	genuine issue precluding summary judgment.
Farra.	However, undisputed for the purposes of the
Supporting Evidence: Defense Exhibit 2,	present Motion.
Transcript/Audio 911; Defense Exhibit 3,	

Dispatch CAD.	
343. Because of a language barrier between the	343. This is not a material fact creating a
dispatcher and Mr. Nam Tran the dispatcher	genuine issue precluding summary judgment.
mistakenly believed Mr. Tran said his son had a	Further, the Plaintiffs' UMF lacks foundation,
weapon.	calls for speculation, and is irrelevant to the
Supporting Evidence: Defense Exhibit 2, 911;	issue of what was reported to officers by
Defense Exhibit 3, Dispatch CAD.	Dispatch.
	Exhibit 2, Transcript/Audio 911 Recording;
	Exhibit 3, Dispatch CAD.
344. Dispatch made responding officers aware	344. This is not a material fact creating a
they were responding to a California Welfare	genuine issue precluding summary judgment.
and Institutions 5150 call (hereinafter "5150");	However, undisputed for the purposes of the
a gravely disables individual who may be a	present Motion.
danger to himself or others.	
Supporting Evidence: Exhibit B, Deposition of	
Daniel Karschamroon, pp. 115:8-14, 225:1-25	
345. Dispatch also made responding officers	345. This is not a material fact creating a
aware that offices had been dispatched on	genuine issue precluding summary judgment.
several prior occasions to 5150 calls involving	However, undisputed for the purposes of the
Andy at the same address.	present Motion.
Supporting Evidence: Exhibit C, Deposition of	

Richard Gendreau, pp. 305:5-25, 306:1-25.	
346. As Mr. Zimmerman was walking across	346. This is not a material fact creating a
Barnett Way towards Mr. Tran's house yelling	genuine issue precluding summary judgment.
"stop" and "that's enough" at Andy he saw a	However, undisputed for the purposes of the
marked Garden Grove Police car directly	present Motion.
alongside Mr. Zimmerman's car and saw	
Officer Karschamroon exit and walk towards	
Andy's house (Mr. Zimmerman referred to him	
as Officer one throughout his deposition but	
there is not dispute Officer Karschamroon was	
the first arriving officer).	
Supporting Evidence: Exhibit A, Deposition	
of Mark Zimmerman, pp. 43:7-19, 44:7-21,	
45:3-25.	
347. Mr. Zimmerman testified Andy was	347. This is not a material fact creating a
wearing a tight fitting t-shirt that was too small	genuine issue precluding summary judgment.
for him as was also wearing work out type	However, undisputed for the purposes of the
shorts.	present Motion.
Supporting Evidence: Exhibit A, Deposition	
of Mark Zimmerman, pp. 41:8-15, 42:2-18.	
348. Mr. Zimmerman said it was clear by the	348. This is not a material fact creating a

way Andy was dressed that he did not have any	genuine issue precluding summary judgment.
weapons on him.	For the purposes of the present Motion, it
Supporting Evidence: Exhibit A, Deposition	undisputed that Zimmerman held that opinion,
of Mark Zimmerman, pp. 41:19-23, 42:2-18.	but such testimony is irrelevant, speculative,
	and lacks foundation.
349. Mr. Zimmerman said Officer	349. This is not a material fact creating a
Karschamroon also began yelling things like	genuine issue precluding summary judgment.
stop towards Andy.	However, undisputed for the purposes of the
Supporting Evidence: Exhibit A, Deposition	present Motion.
of Mark Zimmerman, pp. 49:8-25, 50:5-12.	
350. Mr. Zimmerman said that Andy	350. This is not a material fact creating a
immediately snapped out of whatever state he	genuine issue precluding summary judgment.
was in when he heard Mr. Zimmerman and	For the purposes of the present Motion, it is
Officer Karschamroon yell towards him and	undisputed that Zimmerman testified as stated,
that Andy turned towards Mr. Zimmerman and	but his opinion as to Andy's actual mental state
Officer Karschamroon and stopped what he was	is speculative and lacks foundation.
dong with the window screen.	
Supporting Evidence: Exhibit A, Deposition	
of Mark Zimmerman, pp. 51:9-22, 52:1-24.	
351. Mr. Zimmerman testified that once he saw	351. Disputed. Zimmerman testified that the
Officer Karschamroon arrive he stopped	distance was between 40-50 feet, and despite

walking towards Andy and went to the back of	admittedly impaired vision, he does not wear
his truck in order to watch from a distacne of	his prescription contact lens.
approximately 40 feet away with no	Zimmerman Depo., 22:3-7, 65:1-12, 162:14-19
obstructions of any kind between he and the	
scene of the incident.	
Supporting Evidence: Exhibit A, Deposition	
of Mark Zimmerman, pp. 49:8-25, 50:5-12,	
65:8-10.	
352. Officer Karschamroon testified he knew	352. This is not a material fact creating a
he was responding to a 5150 call and knew that	genuine issue precluding summary judgment.
dealing with the mentally ill was part of his job	However, undisputed for the purposes of the
responsibilities.	present Motion.
Supporting Evidence: Exhibit B, Deposition of	
Daniel Karschamroon, pp. 109:12-25, 115:8-14,	
193:10-12, 225:1-25, 239:1-13	
353. However, Officer Karschamroon testified	353. This is not a material fact creating a
he could not recall anything specifically he was	genuine issue precluding summary judgment.
trained to do with 5150/mentally ill suspects.	However, Officer Karschamroon testified that
Supporting Evidence: Deposition of Daniel	he had "scenario training" with respect to
Karschamroon, pp. 11:1-25, 112:1-25, 210:11-	dealing with the mentally ill.
19.	Karschamroon Depo., 110:1-13

354. Officer Karschamroon never testified that	354. This is not a material fact creating a
the Garden Grove Police Department has a	genuine issue precluding summary judgment.
General Order ("GGPD General Orders")	However, disputed to the extent the proffered
specifically dealing with the mentally ill and	evidence does not show what Officer
5150's.	Karschamroon was asked about said General
Supporting Evidence: Exhibit H, GGPD	Order.
General Order 5.9.	
355. Officer Karschamroon also testified was	355. This is not a material fact creating a
unable to explain what he was trined regarding	genuine issue precluding summary judgment.
the 4 th Amendment to the United States	However, disputed to the extent Officer
Constitution, excessive force, the proper use of	Karschamroon testified that he did receive
the GGPD IVS Unit or taser policies.	training on such matters
Supporting Evidence: Deposition of Daniel	Karschamroon Depo., 88:8-89:19; 94:12-20,
Karschamroon, pp. 87:7-25, 88-90, 107:17-24,	108:8-109:25
16:1-26, 168:6-7/15-22, 169:5-8, 170:12-14,	
224:14-25.	
356. However, both Officer Karschamroon and	356. This is not a material fact creating a
Gendreau testified that they had been trained at	genuine issue precluding summary judgment.
the Academy and during GGPD Field Training	However, undisputed for the purposes of the
to use the minimum amount of force required	present Motion.
under the circumstances.	

Supporting Evidence: Deposition of Daniel	
Karschamroon, pp. 123:17-21, Exhibit C,	
Deposition of Richard Gendreau, pp. 123:22-25,	
124:1-20.	
357. Officer Karschamroon testified that he	357. This is not a material fact creating a
became a sworn Garden Grove Police Officer	genuine issue precluding summary judgment.
on November 17, 2007	However, undisputed for the purposes of the
Supporting Evidence: Deposition of Daniel	present Motion.
Karschamroon, pp. 69:1-2.	
358. Before becoming a police officer Officer	358. This is not a material fact creating a
Karschamroon testified he had been in the	genuine issue precluding summary judgment.
United States Marine Corps since 2003 and	However, undisputed for the purposes of the
remained in the reserves from the time he	present Motion.
became a police officer until September 3,	
2008.	
Supporting Evidence: Deposition of Daniel	
Karschamroon, pp. 25:5-24.	
359. Officer Karschamroon testified that on	359. This is not a material fact creating a
September 3, 2008, he was a Staff Sergeant in	genuine issue precluding summary judgment.
the Marine Corps reserves and was a brown belt	However, undisputed for the purposes of the
martial instructor in the Marine Corps.	present Motion.

Supporting Evidence: Deposition of Daniel	
Karschamroon, pp. 39:10-13, 63:15-22, 65:16-	
22.	
360. As a brown belt martial instructor he	360. This is not a material fact creating a
would train fellow Marines in pain compliance	genuine issue precluding summary judgment.
moves, wrist control, arm bar take downs, hip	However, undisputed for the purposes of the
throws and other techniques to subdue people.	present Motion.
Supporting Evidence: Deposition of Daniel	
Karschamroon, pp. 58:12-25.	
361. Officer Karschamroon testified he	361. This is not a material fact creating a
positined his patrol car adjacent to Mr.	genuine issue precluding summary judgment.
Zimmerman's house on Paloma Drive with the	However, undisputed for the purposes of the
front of his car facing Mr. Tran's house.	present Motion.
Supporting Evidence: Deposition of Daniel	
Karschamroon, pp. 229:1-22.	
362. Officer Karschamroon testified that his car	362. This is not a material fact creating a
was equipped with an In-Car Video System	genuine issue precluding summary judgment.
(hereinafter "IVS Unit").	However, undisputed for the purposes of the
Supporting Evidence: Deposition of Daniel	present Motion.
Karschamroon, pp. 229:1-22.	
363. Officer Karschamroon testified that his car	363. This is not a material fact creating a

was positioned in such a fashion that his IVS	genuine issue precluding summary judgment.
Unit would have videotaped the encounter	However, undisputed for the purposes of the
between he and Mr. Tran.	present Motion.
Supporting Evidence: Deposition of Daniel	
Karschamroon, pp. 229:1-22	
364. Garden Grove General Order 5.31 states	364. This is not a material fact creating a
that all officer must activate their IVS unite	genuine issue precluding summary judgment.
anytime they are going to detain someone.	However, disputed to the extent all General
Supporting Evidence: Exhibit H, GGPD	Orders are "guidelines," and the purpose of the
General Order 5.31.	In-Car Video System (IVS) is to provide an
	accurate, unbiased audiovisual record of
	enforcement related and non-criminal incidents
	that will enhance criminal prosecutions and
	limit civil liabilities. The policy is non-
	punitive in nature, and no disciplinary action for
	violations of this policy will be proposed unless
	the employee refuses either actively or
	passively, as demonstrated by repeated
	instances of his/her failure.
	General Order 5.31; General Order,
	"Statement by the Chief of Police"

365. Officer Karschamroon testified he was 365. This is not a material fact creating a unaware of the Garden Grove General Order genuine issue precluding summary judgment. 5.31 regarding the mandatory uses of the IVS However, disputed to the extent all General Unit believing, wrongly, that he had complete Orders are "guidelines," and the purpose of the discretion to either activate or not activate his In-Car Video System (IVS) is to provide an IVS Unit. accurate, unbiased audiovisual record of Supporting Evidence: Exhibit B, Deposition of enforcement related and non-criminal incidents Daniel Karschamroon, pp. 169: 5-8; Exhibit H, that will enhance criminal prosecutions and GGPD General Order 5.31. limit civil liabilities. The policy is nonpunitive in nature, and no disciplinary action for violations of this policy will be proposed unless the employee refuses either actively or passively, as demonstrated by repeated instances of his/her failure. General Order 5.31; General Order, "Statement by the Chief of Police" 366. Officer Karschamroon testified 366. This is not a material fact creating a genuine issue precluding summary judgment, inconsistently with Mr. Zimmerman that Andy had part of his body inside the window where any variance in the proffered testimony is not germane to the legal issues in dispute. the screen was removed when he arrived; Mr. Zimmerman testified that Andy had just taken

the screen on the window when he and Officer	
Karschamroon began yelling at him and never	
saw Andy reach inside the window.	
Supporting Evidence: Exhibit B, Deposition of	
Daniel Karschamroon, pp. 235: 13-14; Exhibit	
A, Deposition of Mark Zimmerman, pp. 38: 1-	
18, 39: 1-23, 52: 1-24	
367. Officer Karschamroon testified when he	367. This is not a material fact creating a
yelled at Andy he immediately atopped what he	genuine issue precluding summary judgment.
was doing and turned towards Officer	However, undisputed for the purposes of the
Karschamroon.	present Motion.
Supporting Evidence: Exhibit B, Deposition	
on Daniel Karschamroon, pp. 244: 15-25, 246:	
12-15.	
368. Officer Karschamroon testified that he	368. This is not a material fact creating a
called Andy by his name Andy and was	genuine issue precluding summary judgment.
uncertain if he learned Andy's name from	However, undisputed for the purposes of the
hearing Mr. Zimmerman saying it or hearing	present Motion.
Andy's name from dispatch.	
Supporting Evidence: Exhibit B, Deposition of	

Daniel Karschamroon, pp. 245: 15-25	
369. Officer Karschamroon testified he	369. This is not a material fact creating a
commanded Andy to walk towards him and	genuine issue precluding summary judgment.
Andy complied.	However, undisputed for the purposes of the
Supporting Evidence: Exhibit B, Deposition of	present Motion.
Daniel Karschamroon, pp. 247: 8-12, 257: 4-8	
370. Officer Karschamroon testified that while	370. This is not a material fact creating a
Andy was walking towards him Andy appeared	genuine issue precluding summary judgment.
confused, had a puzzled look on his face and	However, undisputed for the purposes of the
appeared in need of some type of medical help.	present Motion.
Supporting Evidence: Deposition of Officer	
Karschamroon, pp. 103: 1-25, 256: 7-8, 279: 1-	
6/14-16.	
371. Officer Karschamroon testified Andy	371. This is not a material fact creating a
appeared confused throughout his entire	genuine issue precluding summary judgment.
encounter with Andy.	However, disputed to the extent that the
Supporting Evidence: Exhibit B, Deposition of	proffered testimony only pertains to the time
Daniel Karschamroon, pp. 259: 1-7.	from when Andy turned around on the porch
	and the time he stopped 10-15 feet away from
	Officer Karschamroon, after which Andy turned
	around.

	Karshamroon Depo., pp. 258:24-259:16
372. Mr. Zimmerman also testified that Andy	372. This is not a material fact creating a
appeared confused during his time with the	genuine issue precluding summary judgment.
police.	However, disputed to the extent that
Supporting Evidence: Exhibit A, Deposition	Zimmerman also described Andy as "agitated"
of Mark Zimmerman, pp. 71: 14-20, 72: 16-20,	and "not calm."
73: 4-5, 193: 4-24.	Zimmerman Depo., 38:3-7, 77:17-24
373. Officer Karschamroon testified that when	373. This is not a material fact creating a
Andy was approximately 10-15 feet from him	genuine issue precluding summary judgment.
he told Andy to stop and he did.	However, undisputed for the purposes of the
Supporting Evidence: Exhibit b, Deposition of	present Motion.
Daniel Karschamroon, pp. 244: 15-25.	
374. Officer Karschamroon testified that when	374. This is not a material fact creating a
Andy stopped 10-15 feet away he told Andy to	genuine issue precluding summary judgment.
turn around with his back facing Officer	However, undisputed for the purposes of the
Karschamroon and Andy complied	present Motion.
Supporting Evidence: Exhibit B, Deposition of	
Daniel Karschamroon, pp. 245: 1-8.	
375. Officer Karschamroon testified that when	375. This is not a material fact creating a
Andy turned around Officer Karschamroon told	genuine issue precluding summary judgment.
Andy to put his hands on his head and Andy	However, undisputed for the purposes of the

complied.	present Motion.
Supporting Evidence: Exhibit B, Deposition of	
Daniel Karschamroon, pp. 245: 1-20, 259: 22-	
23.	
376. Officer Karschamroon testified that once	376. This is not a material fact creating a
Andy has is back towards him with his hands on	genuine issue precluding summary judgment.
his head Officer Karschamroon approached	However, undisputed for the purposes of the
Andy and told him to interlock his fingers and	present Motion.
Andy complied.	
Supporting Evidence: Exhibit B, Deposition of	
Daniel Karschamroon, pp. 245: 1-15, 262: 1-4.	
377. Officer Karschamroon testified he wanted	377. This is not a material fact creating a
Andy to have his back to him so that Officer	genuine issue precluding summary judgment.
Karschamroon would be in position of	However, undisputed for the purposes of the
advantage.	present Motion.
Supporting Evidence: Exhibit B, Deposition of	
Daniel Karschamroon, pp. 267: 13-24.	
378. Officer Karschamroon testified he then	378. This is not a material fact creating a
went "hands on" with Andy by placing a	genuine issue precluding summary judgment.
handcuff on Andy's right wrist and placing his	However, undisputed for the purposes of the
other hand on Andy'r left wrist in order to	present Motion.

maintain control of Andy.	
Supporting Evidence: Exhibit B, Deposition of	
Daniel Karschamroon, pp. 267:13-24.	
379. Officer Karschamroon testified that up to	379. This is not a material fact creating a
this point Andy had followed every order given,	genuine issue precluding summary judgment.
that Officer Karschamroon had not see Andy be	However, undisputed for the purposes of the
violent at all, that Andy made no aggressive	present Motion.
moves of any kind and did not look as if he may	
try to flee.	
Supporting Evidence: Exhibit B, Deposition of	
Daniel Karschamroon, pp. 261: 12-18, 264: 17-	
20: pp. 284: 1-25; 285:1-6.	
380. Officer Karschamroon testified that he had	380. This is not a material fact creating a
been trained to not approach a suspect or go	genuine issue precluding summary judgment.
"hands on" with a suspect if he reasonably	However, Officer Karschamroon also testified
believed the suspect was armed.	that "it depends on the situation."
Supporting Evidence: Exhibit B, Deposition of	Karschamroon Depo., 50:8-16
Daniel Karschamroon, pp. 50: 8-25, 51: 1-10,	
227: 15-25, 228: 1-6, 244: 1-8, 271: 1-6	
381. Officer Karschamroon testified he knew	381. This is not a material fact creating a
two other officers were also responding but he	genuine issue precluding summary judgment.

did not feel he needed to wait for back-up	However, undisputed for the purposes of the
because Andy had complied with all commands	present Motion.
and could see Andy's hands.	
Supporting Evidence: Exhibit B, Deposition of	
Daniel Karschamroon, pp. 271: 1-6.	
382. Officer Karschamroon testified that telling	382. This is not a material fact creating a
Andy to interlock his fingers was the last	genuine issue precluding summary judgment.
"command" he or anyone ever gave to Andy.	However, Officer Karschamroon testified that
Supporting Evidence: Exhibit B, Deposition of	telling Andy to "relax" and "calm down" were
Daniel Karschamroon, pp. 281: 9-25, 282.	orders as well, stating that the commands given
	were appropriate given the goal of relaxing
	Andy.
	Karschamroon Depo., 283:20-284:20, 299:20-
	22
383. Officer Karschamroon testified that once	383. Disputed. Officer Karschamroon also
he put a handcuff on Andy's right wrist his	stated in his deposition that Andy was "actively
hands tensed.	resisting" by not allowing his arms to be pulled
Supporting Evidence: Exhibit B, Deposition of	apart and providing tension to pull his arms
Daniel Karschamroon, pp. 265: 13-18, 268: 9-	together, and that he "thought it might turn
10.	violent." Officer Karschamroon's also testified
	that when a handcuff was placed on Andy's

right wrist, Andy "tensed" and Officer Karschamroon "could feel his fingers closing, kind of curling up from that interlocked position" and "close up as if the fingers were curling." Karschamroon Depo., 321:22-322:22, 280:12-23, 362:12-17, 366:14-19 384. Officer Karschamroon testified he did not 384. Disputed. Officer Karschamroon also know whether Andy's fingets tensed in an effort stated in his deposition that Andy was "actively to obey the last command given; to interlock his resisting" by not allowing his arms to be pulled fingers. apart and providing tension to pull his arms Supporting Evidence: Exhibit B, Deposition of together, and that he "thought it might turn Daniel Karschamroon, pp. 281: 9-25. violent." Officer Karschamroon's also testified that when a handcuff was placed on Andy's right wrist, Andy "tensed" and Officer Karschamroon "could feel his fingers closing, kind of curling up from that interlocked position" and "close up as if the fingers were curling." Karschamroon Depo., 321:22-322:22, 280:12-23, 362:12-17, 366:14-19

385. Officer Karschamroon testified that the	385. This is not a material fact creating a
entire encounter with Andy up until this point	genuine issue precluding summary judgment.
was between 20-45 seconds.	However, undisputed for the purposes of the
Supporting Evidence: Exhibit B, Deposition of	present Motion.
Daniel Karschamroon, pp. 177: 14-24.	
386. Officer Karschamroon testified that never	386. Disputed. Officer Karschamroon also
saw Andy's hands become non interlocked.	stated in his deposition that Andy was "actively
Supporting Evidence: Exhibit B: Deposition	resisting" by not allowing his arms to be pulled
of Daniel Karschamroon, pp. 270: 10-11.	apart and providing tension to pull his arms
	together, and that he "thought it might turn
	violent." Officer Karschamroon's also testified
	that when a handcuff was placed on Andy's
	right wrist, Andy "tensed" and Officer
	Karschamroon "could feel his fingers closing,
	kind of curling up from that interlocked
	position" and "close up as if the fingers were
	curling."
	Karschamroon Depo., 321:22-322:22, 280:12-
	23, 362:12-17, 366:14-19
387. This testimony is in sharp contrast to	387. This is not a material fact creating a
paragraph 15 of Officer Karschamroon's	genuine issue precluding summary judgment.

Declaration wherein he declares: "he essentially released his interlocking grip and closed his hands into fists." In reality, Officer Karschamroon told Internal Addairs and testified repeatedly that he never saw Andy's hands ball into fists.

Supporting Evidence: Exhibit B, Deposition of Daniel Karschamroon, pp. 290: 5-8, 291: 20-24, 292: 1-10; Karschamroon GGPD Internal Affairs Interview, pp. 7-8

388. Officer Karschamroon testified that he was aware Officer Gendreau told Internal Affairs that Andy's hands balled into fists and he was also present with Officer Gendreau testified he saw Andy's hands ball up into fists yet Officer Karschamroon repeatedly said he never saw Andy's hands balled into fists at any

Plaintiffs are arguing semantics. Officer Karschamroon stated in his deposition that Andy was "actively resisting" by not allowing his arms to be pulled apart and providing tension to pull his arms together, and that he "thought it might turn violent." Officer Karschamroon's also testified that when a handcuff was placed on Andy's right wrist, Andy "tensed" and Officer Karschamroon "could feel his fingers closing, kind of curling up from that interlocked position" and "close up as if the fingers were curling." Karschamroon Depo., 321:22-322:22, 280:12-23, 362:12-17, 366:14-19

388. This is not a material fact creating a genuine issue precluding summary judgment.

Plaintiffs are arguing semantics. Officer

Karschamroon stated in his deposition that

Andy was "actively resisting" by not allowing his arms to be pulled apart and providing tension to pull his arms together, and that he

time.	"thought it might turn violent." Officer
Supporting Evidence: Exhibit B, Deposition of	Karschamroon's also testified that when a
Daniel Karschamroon, pp/ 292: 1-10.	handcuff was placed on Andy's right wrist,
	Andy "tensed" and Officer Karschamroon
	"could feel his fingers closing, kind of curling
	up from that interlocked position" and "close up
	as if the fingers were curling."
	Karschamroon Depo., 321:22-322:22, 280:12-
	23, 362:12-17, 366:14-19
389. In truth, Officer Karschamroon told	389. This is not a material fact creating a
Internal Affairs during deposition testimony	genuine issue precluding summary judgment.
that Andy never actively resisted any command	Plaintiffs are arguing semantics. Officer
at anytime; Officer Karschamroon said and	Karschamroon testified that his statement to
testified that at most he thought Andy may	Internal Affairs regarding Andy's resistance
resist.	included active resistance.
Supporting Evidence: Exhibit B, Deposition of	Karschamroon Depo., 362:12-363:11, 365:4-18
Daniel Karschamroon, pp. 364, 365: 9-13, 366:	
1-3, 20-25; Karschamroon GGPD Internal	
Affairs Interview, pp. 6.	
390. Mr Zimmerman also testified that while	390 Disputed. Nothing in Zimmerman's
Officer Karschamroon was alone with Andy	testimony disputes the officers' account of

there was no evidence of any type of struggle and everything looked "routine" and under control.

Supporting Evidence: Exhibit A, Deposition of Mark Zimmerman, pp. 79: 11-20, 80: 10-16, 81: 4-5, 83:18-25, 85: 1-10, 87: 3-7/16-23, 97: 5-6, 100: 1-25, 102: 4-9, 103: 1-2, 197: 20-25, 198: 1-5, 209: 23-25, 276: 10-20.

Andy's resistance other than his own speculation. Zimmerman testified that he could see subtle movement going on between the officers and Andy and that there could have been a "whole 'nother [sic] set of scenarios going on" that he did not see. He could not hear what was being said, and although his eyesight is admittedly impaired, he never wears his prescription contact lens. Zimmerman observed the incident from a distance of approximately 40-50 feet and could not tell what small, detailed movements were occurring. He does not know whether the officers tried to move Andy's hands from the top of his head, and admits that many things could have been said or done which he could not observe or hear. While Zimmerman testified that Andy's hands were on his head at all times, he cannot say whether there was any kind of struggle. Zimmerman Depo., 22:3-7, 82:11-18, 92:19-25, 93:16-19, 96:2-10, 100:7-20, 162:11-19, 187:3391. Officer Karschamroon testified that when Andy's hands tensed up he told Andy to "relax" yet acknowledged that he did not know if this was relaxed for Andy and that he had never been trained that "relax" or "calm down" were lawful orders.

Supporting Evidence: Exhibit B, Deposition of Daniel Karschamroon, pp. 282, 338: 1-25, 339: 15-18, 345: 1-18.

11, 200:11-24, 201:6-12, 209:7-22, 217:3-9, 222:11-223:13, 276:22-25, 287:25-288:12.

391. Disputed. Officer Karschamroon testified that Andy was "actively resisting" by not allowing his arms to be pulled apart and providing tension to pull his arms together, and that he "thought it might turn violent." Officer Karschamroon's also testified that when a handcuff was placed on Andy's right wrist, Andy "tensed" and Officer Karschamroon "could feel his fingers closing, kind of curling up from that interlocked position" and "close up as if the fingers were curling." Officer Karschamroon testified that telling Andy to "relax" and "calm down" were orders as well, stating that the commands given were appropriate given the goal of relaxing Andy. Karschamroon Depo., 321:22-322:22, 280:12-23, 283:20-284:20, 299:20-22, 362:12-17, 366:14-19

392. Officer Karschamroon testified he was trained that put your hands behind your back was a lawful order.

Supporting Evidence: Exhibit B, Deposition of Daniel Karschamroon, pp. 339: 15-18.

393. However, Officer Karschamroon testified he never told Andy to separate his fingers, put his hands behind his back or inform Andy that he was going to be handcuffed.

Supporting Evidence: Exhibit B, Deposition of Daniel Karschamroon, pp. 282, 345: 1-18, 268: 19-23, 269: 1-4.

392. This is not a material fact creating a genuine issue precluding summary judgment.

However, undisputed for the purposes of the present Motion.

393. Disputed. Officer Karschamroon testified that Andy was "actively resisting" by not allowing his arms to be pulled apart and providing tension to pull his arms together, and that he "thought it might turn violent." Officer Karschamroon's also testified that when a handcuff was placed on Andy's right wrist, Andy "tensed" and Officer Karschamroon "could feel his fingers closing, kind of curling up from that interlocked position" and "close up as if the fingers were curling." Further, it is immaterial that Officer Karschamroon may not have said anything to Andy about being handcuffed since the act of attempting to handcuff him established the officer's intention. Officer Karschamroon's deposition testimony

	that Andy was not allowing his arms to be
	pulled apart and was providing tension to pull
	his arms together demonstrates resistance to that
	intention.
	Karschamroon Depo., 321:22-322:22, 280:12-
	23, 362:12-17, 366:14-19
394. Officer Karschamroon could not explain	394. This is not a material fact creating a
why he did not tell Andy to un-interlock his	genuine issue precluding summary judgment.
fingers, or to hands behind back behind his back	However, Officer Karschamroon testified that
or theat he was going to handcuff Andy.	telling Andy to "relax" and "calm down" were
Supporting Evidence: Exhibit B, Deposition of	orders, stating that the commands given were
Daniel Karschamroon, pp. 268: 19-23, 169: 1-4.	appropriate given the goal of relaxing Andy.
	Karschamroon Depo., 283:20-284:20, 299:20-
	22
395. Mr. Zimmerman testified that it was right	395. This is not a material fact creating a
after Officer Karschamroon put his hands near	genuine issue precluding summary judgment.
Andy's hands on top of Andy's head when	However, Zimmerman testified that Andy had
Officer Gendreau arrived.	his hands on top of his head for approximately
Supporting Evidence: Exhibit A, Deposition	30 seconds before Officer Gendreau arrived.
of Mark Zimmerman, pp. 199; 2-6.	Zimmerman Depo., 200:9-17
396. Officer Karschamroon testified that he had	396. This is not a material fact creating a

never worked with Officer Gendreau personally	genuine issue precluding summary judgment.
and had never responded to a call Officer	However, undisputed for the purposes of the
Gendreau was present at either before or after	present Motion.
September 3, 2008.	
Supporting Evidence: Exhibit B, Deposition of	
Daniel Karschamroon, pp. 142: 3-25, 144: 1-5,	
145: 1-25.	
397. Officer Karschamroon testified that Officer	397. This is not a material fact creating a
Gendreau positioned one to three feet away from	genuine issue precluding summary judgment.
Officer Karschamroon at all times.	However, undisputed for the purposes of the
Supporting Evidence: Exhibit B, Deposition of	present Motion.
Daniel Karschamroon, pp. 336: 17-19.	
398. Officer Karschamroon told Internal Affairs	398. This is not a material fact creating a
and testified repeatedly that he never saw Officer	genuine issue precluding summary judgment.
Gendreau ever touch Andy and he never asked	However, to the extent that Plaintiffs seek to
Officer Gendreau to help him handcuff Andy.	imply that Officer Gendreau did not touch Andy
Supporting Evidence: Exhibit B, Deposition of	or attempt to assist Officer Karschamroon, Mr.
Daniel Karschamroon, pp. 273:8-11,274,292: 17-	Zimmerman testified that Officer Gendreau
23,293: 1,331:16-25,332: 18-21, 333: 7-11.	assisted Officer Karschamroon by putting "his
	hands on Andy's hands or on the other officer's
	hands or in that vicinity" for "about 20 seconds"

	in what appeared to him as an effort to "keep
	more control" of Andy.
	Zimmerman Depo., 92:19-25, 93:16-19, 209:7-
	22
399. Officer Gendreau testified that he became a	399. This is not a material fact creating a
sworn Garden Grove Police Officer on September	genuine issue precluding summary judgment.
9, 2005.	However, undisputed for the purposes of the
Supporting Evidence: Exhibit C, Deposition of	present Motion.
Richard Gendreau, pp. 38:10	
400. Similar to Officer Karschamroon, Officer	400. This is not a material fact creating a
Gendreau testified that before he became a police	genuine issue precluding summary judgment.
officer he had taken martial arts training for two	However, undisputed for the purposes of the
and one half years and had obtained a brown belt	present Motion.
in karate.	
Supporting Evidence: Exhibit C, Deposition of	
Richard Gendreau, pp. 27:21-25,28: 1-21,29: 1-	
25.	
401. Officer Gendreau testified he knew he was	401. This is not a material fact creating a
responding to a 5150.	genuine issue precluding summary judgment.
Supporting Evidence: Exhibit C, Deposition of	However, undisputed for the purposes of the
Richard Gendreau, pp. 119: 19-24.	present Motion.

402. Officer Gendreau told Internal Affairs that	402. This is not a material fact creating a
he was made aware of Andy's mental health	genuine issue precluding summary judgment.
history prior to arriving at the scene.	However, undisputed for the purposes of the
Supporting Evidence: Gendreau GGPD Internal	present Motion.
Affairs Interview, pp. 18.	
403. Officer Gendreau testified the only training	403. This is not a material fact creating a
he received concerning the mentally was they	genuine issue precluding summary judgment.
could become violent	However, disputed to the extent that in the
Supporting Evidence: Exhibit C, Deposition of	testimony cited by Plaintiffs, Officer Gendreau
Richard Gendreau, pp. 119: 19-24.	also included "deescalate the situation" and
	"keep them as calm as possible" as part of his
	training.
	Gendreau Depo., 119:19-24
404. Officer Gendreau was unable to articulate	404. This is not a material fact creating a
his training dealing with the mentally ill or the	genuine issue precluding summary judgment.
4th Amendment to the United States Constitution,	However, Officer Gendreau did testify that he
excessive force, the IVS unit, or the GGPD Taser	has been trained to use the minimum amount of
policies.	force under the circumstances.
Supporting Evidence: Exhibit C, Deposition of	Gendreau Depo., 123:22-1243
Richard Gendreau, pp. 53:11-22, 112: 1-25, 119:	
19-24, 160: 10-13,161: 1-3.	

405. Regarding the IVS Unit, Officer Gendreau testified he knew the IVS Unit should, not must as GGPD General Order 5.31 states, be activated when a subject was being detained.

Supporting Evidence: Exhibit C, Deposition of Richard Gendreau, pp. 81:4-9.

405. This is not a material fact creating a genuine issue precluding summary judgment. However, the General Orders are simply "guidelines," and the purpose of the In-Car Video System (IVS) is to provide an accurate, unbiased audiovisual record of enforcement related and non-criminal incidents that will enhance criminal prosecutions and limit civil liabilities. The policy is non-punitive in nature, and no disciplinary action for violations of this policy will be proposed unless the employee refuses either actively or passively, as demonstrated by repeated instances of his/her failure.

General Order 5.31, General Order, "Statement by the Chief of Police"

406. However, Officer Gendreau testified he did not attempt to activate his IVS Unit upon arrival notwithstanding he considered this a "high priority" call and he knew Andy was being detained.

406. This is not a material fact creating a genuine issue precluding summary judgment.

However, Officer Gendreau did attempt to activate his IVS when the officers were having difficulty with Andy and that a taser may need

Supporting Evidence: Exhibit C,	to be deployed.
Deposition of Richard Gendreau, pp. 93:1-4, 94:	Gendreau Depo., 96:3-20
1-16, 95: 1-17, 107: 24-25, 108:1-3, 108: 5-14.	
407. Officer Gendreau testified he arrived 20-30	407. This is not a material fact creating a
seconds after Officer Karschamroon	genuine issue precluding summary judgment.
Supporting Evidence: Deposition of Officer	However, undisputed for the purposes of the
Gendreau, pp. 136: 8-14.	present Motion.
408. Officer Gendreau testified when he arrived	408. This is not a material fact creating a
he saw an elderly couple and a small boy,	genuine issue precluding summary judgment.
Plaintiffs Bua Phan, Van Tran and Kenny Tran,	However, undisputed for the purposes of the
near Andy's front door when he arrived.	present Motion.
Supporting Evidence: Exhibit C, Deposition of	
Richard Gendreau, pp. 207: 5-11.	
409. Officer Gendreau declared in paragraph 8 of	409. Disputed. Officer Gendreau testified that
his Declaration that he witnessed Officer	he saw Both of officer Karschamroon's hands
Karschamroon "clearly struggling" to get Andy's	engaged when he arrived on the scene, and that
hands behind his back. However, Officer	he was concerned that Andy was not compliant
Gendreau never testified that he ever saw Officer	the very second he arrived.
Karschamroon struggling with Andy.	Gendreau Depo.,120:24-121:11,175:20-177:6
Supporting Evidence: Exhibit C, Deposition of	
Richard Gendreau, pp.175: 1-25,176: 1-25,177:	

1-5.	
410. Officer Gendreau testified Officer	410. Disputed. Officer Gendreau testified that
Karscamroon had a hold of both of Andy's arms	Andy's hands were under "some" control, and
and maintained control of Andy's hands.	that there was still the possibility that Andy
Supporting Evidence: Exhibit C, Deposition of	could break free and swing his arms.
Richard Gendreau, pp. 175: 1-25, 176: 1-25,	Gendreau Depo., 176:23-177:6
177: 1-5.	
411. Further, Officer Karschamroon testified he	411. This is not a material fact creating a
never struggled with Andy in the presence of	genuine issue precluding summary judgment.
Officer Gendreau.	However, to the extent that Plaintiffs seek to
Supporting Evidence: Exhibit B, Deposition of	imply that Officer Gendreau did not touch Andy
Daniel Karschamroon, pp. 285: 11-13;	or attempt to assist Officer Karschamroon, Mr.
Karschamroon GGPD Internal Affairs Interview,	Zimmerman testified that Officer Gendreau
pp. 9.	assisted Officer Karschamroon by putting "his
	hands on Andy's hands or on the other officer's
	hands or in that vicinity" for "about 20 seconds"
	in what appeared to him as an effort to "keep
	more control" of Andy.
	Zimmerman Depo., 92:19-25, 93:16-19, 209:7-
	22
412. Karschamroonm, he saw no movements	412. This is not a material fact creating a

by Andy indicative that he was attempting to run or flee (inconsistent with paragraph 10 of Gendreau's Declaration) and saw no movements Andy' by Andy which led him to believe Andy was individently trying to hit, kick, or push he or Officer Gendre Karschamroon.

Supporting Evidence: Exhibit C, Deposition of Richard Gendreau, pp. 174: 14-17; 176: 1-25, him.

413. Officer Gendreau testified that it did not appear Andy understood anything
Officer Gendreau told him yet in paragraph 14 of Gendreau's Declaration he states Andy continued to ignore orders.

177: 1-10, 182: 2-23,187: 1-8,220: 1-24,225: 17-

24,266:1-10.

Supporting Evidence: Exhibit C, Deposition of Richard Gendreau, pp.183: 2-23, 184: 2-7/18-22, 187: 1-8,302:18-25, 303: 9-12.

genuine issue precluding summary judgment.

However, Officer Gendreau testified that

Andy's aggressive appearance resembled
individuals who are prone to throwing a punch.

Gendreau also testified that Andy resisted his
attempts to get his hands behind his back, and
that the only way of subduing Andy was to taser
him.

Gendreau Depo., 178:5-16, 197:7-14, 220:2124

413. This is not a material fact creating a genuine issue precluding summary judgment. However, Officer Gendreau testified that Andy showed no indication that he did not understand the directions given to him either.

Gendreau Depo., 182:22-183:8

414. Officer Gendreau told Internal Affairs that	414. This is not a material fact creating a
he was made aware of Andy's mental health	genuine issue precluding summary judgment.
history prior to arriving at the scene.	However, undisputed for the purposes of the
Supporting Evidence: Gendreau GGPD	present Motion.
Internal Affairs Interview, pp. 18.	
415. However, Officer Gendreau testified that he	415. Disputed. Officer Gendreau did not feel
"did not feel it prudent to try and spend time	it prudent to spend time trying to make sure that
trying to make sure he understood" prior to	Andy understood the multiple warnings given
tasering Andy.	that he would be tased based upon the fact
Supporting Evidence: Exhibit C, Deposition of	Andy had not responded previously to
Richard Gendreau, pp. 299: 1-25.	commands and continued to display the same
	behavior
	Gendreau Depo., 299:9-24
416. Officer Gendreau testified that Andy was not	416. This is not a material fact creating a
"actively resisting" when he was tasered	genuine issue precluding summary judgment.
Supporting Evidence: Exhibit C, Deposition of	However, Officer Gendreau testified that
Richard Gendreau, pp. 264: 19-25)	Andy's aggressive appearance resembled
	individuals who are prone to throwing a punch.
	Gendreau also testified that Andy resisted his
	attempts to get his hands behind his back, and
	that the only way of subduing Andy was to taser

	him. Gendreau Depo., 178:5-16, 197:7-14, 220:21-
417. Both Officers Karschamroon and Gendreau	24417. This is not a material fact creating a
testified Officer Gendreau was on scene between	genuine issue precluding summary judgment.
30-60 seconds before Officer Gendreau tasered	However, undisputed for the purposes of the
Andy.	present Motion.
Supporting Evidence: Exhibit C, Deposition of	
Richard Gendreau, pp. 197: 1; Exhibit B,	
Deposition of Daniel Karschamroon, pp. 342: 23-	
25)	

418. GGPD General Order 5.9 (GGPD Mental Illness & 515 0 Bookings) states in pertinent part: "When responding to a call that involves a person who is mentally ill, officers should obtain as much information as possible to assess and stabilize the scene"; "Communication: It's better to spend 15 minutes talking than 5 minutes fighting"; "Time is on your side (a) slow down, (b) reassess".

Supporting Evidence: Exhibit H, GGPD

General Order 5.9.

418. This is not a material fact creating a genuine issue precluding summary judgment. However, the General Orders are simply "guidelines" for officers and do not impose an independent basis for a civil action.

General Order, "Statement by the Chief of Police"

419. Officer Gendreau Declared in paragraph 1 7 that he stood in front of Andy and said things like put your hands behind your back. However, Officer Karschamroon, who was one to three feet away from Officer Gendreau, told Internal Affairs and testified that he only heard Officer Gendreau say things like "dude calm down" to Andy and never heard Officer Gendreau say get your hands behind your back.

419. This is not a material fact creating a genuine issue precluding summary judgment. The Plaintiffs are arguing semantics. Plaintiffs do not dispute that the officers attempted to relax and calm Andy while attempting to secure him, but rather dispute the exact words spoken. This does not create a genuine issue of material fact precluding summary judgment. Further, it is immaterial that Officer Karschamroon may

Supporting Evidence: Exhibit B, Deposition of Daniel Karschamroon, pp. 328: 1-7,330: 17-25,337: 10-16,340: 8-9,341: 7-16.

not have said anything to Andy about being handcuffed since the act of attempting to handcuff him established the officer's intention. Officer Karschamroon's deposition testimony that Andy was not allowing his arms to be pulled apart and was providing tension to pull his arms together demonstrates resistance to that intention.

Karschamroon Depo., 321:22-322:22, 280:12-23, 362:12-17, 366:14-19

420. Officer Gendreau also Declared in paragraph 10 that he heard Andy growling and saw Andy frothing at the mouth. Officer Karschamroon testified he was one foot from Andy and never heard him growl and never saw Andy drool or froth coming from Andy's mouth at anytime.

Supporting Evidence: Declaration of Daniel Karschamroon, pp. 384: 18, 385:1-5.

420. This is not a material fact creating a genuine issue precluding summary judgment. However, Officer Karschamroon testified that he was positioned behind Andy, and was not in a position to see Andy's face at the time he was tased. As to the issue of Andy growling, Mark Zimmerman testified that although he never saw Andy's lips moving, he heard some audible things coming out of his mouth. Zimmerman also testified that he could see subtle movement going on between the officers and Andy and

	that there could have been a "whole 'nother
	[sic] set of scenarios going on" that he did not
	see.
	Karschamroon Depo., 348:9-15, 355:16-19,
	Zimmerman Depo., 217:3-9, 222:11-223:13,
	276:22-25
421. Officer Gendreau testified that he stood in	421. This is not a material fact creating a
front of Andy for several seconds and then	genuine issue precluding summary judgment.
moved to Andy's side and placed both of his	However, Officer Gendreau testified that the
hands on Andy's left arm and Officer	pain compliance technique he used prior to
Karschamroon also had one of his hands on	tasing Andy lasted approximately 5 to 10
Andy's left arm.	seconds.
Supporting Evidence: Exhibit C, Deposition of	Gendreau Depo., 209:21-210: 6
Richard Gendreau, pp. 121: 21-25, 122: 1-2, 210:	
5-6.	
422. Officer Gendreau testified that he and	422. This is not a material fact creating a
Officer Karschamroon then together tried to pull	genuine issue precluding summary judgment.
Andy's left arm behind his back but could not	However, undisputed for the purposes of the
move Andy's arm at all.	present Motion.
Supporting Evidence: Exhibit C, Deposition of	
Richard Gendreau, pp. 121: 21-25,122: 1-2,210:	

5-6).

423. Officer Karschamroon told Internal Affairs and testified repeatedly that he never saw
Officer Gendreau touch Andy and he did not try to force Andy's arm behind his back either alone or with Officer Gendreau.

Supporting Evidence: Exhibit B, Deposition of Daniel Karschamroon, pp.273: 8-11,274,292: 17-23,293: 1,331:16-25, 332: 18-21, 333: 7-11; Karschamroon GGPD Internal Affairs Interview, pp. 7-8.

423. Officer Karschamroon testified that when a handcuff was placed on Andy's right wrist, Andy "tensed" and Officer Karschamroon "could feel his fingers closing, kind of curling up from that interlocked position" and "close up as if the fingers were curling." Officer Karschamroon also stated in his deposition that Andy was "actively resisting" by not allowing his arms to be pulled apart and providing tension to pull his arms together, and that he "thought it might turn violent." Nothing in Plaintiffs' cited testimony disputes that Andy continued to resist after Gendreau arrived. Further, Mark Zimmerman testified that Officer Gendreau did assist Officer Karschamroon by putting "his hands on Andy's hands or on the other officer's hands or in that vicinity" for "about 20 seconds" in what appeared to him as an effort to "keep more control" of Andy. Nothing in Zimmerman's testimony disputes

	the officers' account of Andy's resistance other
	than his own speculation.
	Karschamroon Depo., 321:22-322:22, 280:12-
	23, 362:12-17, 366:14-19, Zimmerman Depo.,
	22:3-7, 82:11-18, 92:19-25, 93:16-19, 96:2-10,
	100:7-20, 162:11-19, 187:3-11, 200:11-24,
	201:6-12, 209:7-22, 217:3-9, 222:11-223:13,
	276:22-25, 287:25-288:12.
424. Mr. Zimmerman also testified that he never	424. Disputed. Mark Zimmerman testified
saw Officer Gendreau step to Andy' s side and	that Officer Gendreau did assist Officer
place two hands on Andy's arm and try to force	Karschamroon by putting "his hands on Andy's
Andy's arm behind his back.	hands or on the other officer's hands or in that
Supporting Evidence: Exhibit A, Deposition	vicinity" for "about 20 seconds" in what
of Mark Zimmerman, pp.100: 1-25, 102: 4-9	appeared to him as an effort to "keep more
and: 20-24, pp. 150:20-25, 151: 9-11.	control" of Andy. Nothing in Zimmerman's
	testimony disputes the officers' account of
	Andy's resistance other than his own
	speculation.
	Zimmerman Depo., 22:3-7, 82:11-18, 92:19-25,
	93:16-19, 96:2-10, 100:7-20, 162:11-19, 187:3-
	11, 200:11-24, 201:6-12, 209:7-22, 217:3-9,

425. Mr. Zimmerman said he never saw any type of struggle of any kind involving Andy and Officers Karschamroon and Gendreau.

Supporting Evidence: Exhibit A, Deposition of Mark Zimmerman, pp. 79:11-20, 80: 10-16, 81: 4-5, 83: 18-25, 85:1-10, 87: 3-7/16-23, 97: 5-6, 100: 1-25, 102: 4-9,103: 1-2, 150: 20-25,151: 9-11, 197: 20-25, 198: 1-5,209: 23-25, 222: 17-25,224:6-12,276: 10-20,277:1-4,278: 18-21.

222:11-223:13, 276:22-25, 287:25-288:12.

425. This is not a material fact creating a genuine issue precluding summary judgment. However, nothing in Zimmerman's testimony disputes the officers' account of Andy's resistance other than his own speculation. Zimmerman testified that Officer Gendreau did assist Officer Karschamroon by putting "his hands on Andy's hands or on the other officer's hands or in that vicinity" for "about 20 seconds" in what appeared to him as an effort to "keep more control" of Andy. Zimmerman testified that he could see subtle movement going on between the officers and Andy and that there could have been a "whole 'nother [sic] set of scenarios going on" that he did not see. He could not hear what was being said, and although his eyesight is admittedly impaired, he never wears his prescription contact lens. Zimmerman observed the incident from a distance of approximately 40-50 feet could not

tell what small, detailed movements were occurring. He does not know whether the officers tried to move Andy's hands from the top of his head, and admits that many things could have been said or done which he could not observe or hear. While Zimmerman testified that Andy's hands were on his head at all times, he cannot say whether there was any kind of struggle.

Zimmerman Depo., 22:3-7, 82:11-18, 92:19-25, 93:16-19, 96:2-10, 100:7-20, 162:11-19, 187:3-11, 200:11-24, 201:6-12, 209:7-22, 217:3-9, 222:11-223:13, 276:22-25, 287:25-288:12.

426. In fact, Mr. Zimmerman testified that Officer Karschamroon appeared to have everything under control and Officer Gendreau brought with him a "cowboy" attitude and appeared overzealous, impatient and instantly raised the "stress level" of what was happening. Supporting Evidence: Exhibit A, Deposition

426. This is not a material fact creating a genuine issue precluding summary judgment.

However, Zimmerman bases his "cowboy" characterization of Officer Gendreau on "reading" his attitude, the fact he "shot" Andy for no apparent reason "in his opinion," that it's an "intuition thing" even though he "[has] no

of Mark Zimmerman, pp. 98:12-24, 104: 8-9, 119: 8-12/8-12, 120: 14-25, 121: 6-11, 122: 4-8, 276: 10-20, 282:18-25,283: 1-15,286: 5-9/13-14).

basis for it." Further, nothing in Zimmerman's testimony disputes the officers' account of Andy's resistance other than his own speculation. Zimmerman testified that Officer Gendreau did assist Officer Karschamroon by putting "his hands on Andy's hands or on the other officer's hands or in that vicinity" for "about 20 seconds" in what appeared to him as an effort to "keep more control" of Andy. Zimmerman testified that he could see subtle movement going on between the officers and Andy and that there could have been a "whole 'nother [sic] set of scenarios going on" that he did not see. He could not hear what was being said, and although his eyesight is admittedly impaired, he never wears his prescription contact lens. Zimmerman observed the incident from a distance of approximately 40-50 feet could not tell what small, detailed movements were occurring. He does not know whether the

	officers tried to move Andy's hands from the
	top of his head, and admits that many things
	could have been said or done which he could
	not observe or hear. While Zimmerman
	testified that Andy's hands were on his head at
	all times, he cannot say whether there was any
	kind of struggle.
	Zimmerman Depo., 22:3-7, 82:11-18, 92:19-25,
	93:16-19, 96:2-10, 100:7-20, 119:13-120:3,
	162:11-19, 187:3-11, 200:11-24, 201:6-12,
	209:7-22, 217:3-9, 222:11-223:13, 276:8-12,
	276:22-25, 282:18-283:15, 287:25-288:12.
427. Officer Karschamroon and Mr.	427. This is not a material fact creating a
Zimmerman both testified that the only time	genuine issue precluding summary judgment.
Officer stepped to the side of Andy was when	However, undisputed for the purposes of the
he tasered Andy.	present Motion.
Supporting Evidence: Exhibit A, Deposition of	
Mark Zimmerman, pp. 94:11-16, 104: 8-9, 105:	
1-25, 118: 16-17, 232: 10-14, 276: 10-20; Exhibit	
B, Deposition of Daniel Karschamroon, pp.	
333: 7-11,335: 9-20, 347: 16-18.	

428. Mr. Zimmerman was very clear that Officer Gendreau did only two things: he first stood in front of Andy for approximately 20 seconds and then quickly stepped to Andy's side, withdrew a Taser and immediately shot the Taser into Andy's upper right thigh area.

Supporting Evidence: Exhibit A, Deposition of Mark Zimmerman, pp. 94:11-16,104: 8-107,118: 16-17,232:10-14,238: 8-16, 276: 10-20.

428. This is not a material fact creating a genuine issue precluding summary judgment. However, nothing in Zimmerman's testimony disputes the officers' account of Andy's resistance other than his own speculation. Zimmerman testified that Officer Gendreau did assist Officer Karschamroon by putting "his hands on Andy's hands or on the other officer's hands or in that vicinity" for "about 20 seconds" in what appeared to him as an effort to "keep more control" of Andy. Zimmerman testified that he could see subtle movement going on between the officers and Andy and that there could have been a "whole 'nother [sic] set of scenarios going on" that he did not see. He could not hear what was being said, and although his eyesight is admittedly impaired, he never wears his prescription contact lens. Zimmerman observed the incident from a distance of approximately 40-50 feet could not

	tell what small, detailed movements were
	occurring. He does not know whether the
	officers tried to move Andy's hands from the
	top of his head, and admits that many things
	could have been said or done which he could
	not observe or hear. While Zimmerman
	testified that Andy's hands were on his head at
	all times, he cannot say whether there was any
	kind of struggle.
	Zimmerman Depo., 22:3-7, 82:11-18, 92:19-25,
	93:16-19, 96:2-10, 100:7-20, 162:11-19, 187:3-
	11, 200:11-24, 201:6-12, 209:7-22, 217:3-9,
	222:11-223:13, 276:22-25, 287:25-288:12.
429. Officer Gendreau testified that once he	429. This is not a material fact creating a
decided to taser Andy he attempted to activate his	genuine issue precluding summary judgment.
IVS Unit by flipping a switch on his belt.	However, undisputed for the purposes of the
Supporting Evidence: Exhibit C, Deposition of	present Motion.
Richard Gendreau, pp. 96:1-16.	
430. Officer Gendreau, contrary to paragraph 20	430. This is not a material fact creating a
of his Declaration, said his IVS Unit did not	genuine issue precluding summary judgment.
activate but did not know why.	However, Officer Gendreau's declaration stated

Supporting Evidence: Exhibit C, Deposition of	that it was later determined that his vehicle was
Richard Gendreau, pp. 96:1-16.	too far away for the systems to be remotely
	activated.
	Gendreau Decl., ¶ 20
431. Officer Gendreau never documented his IVS	431. This is not a material fact creating a
Unit's alleged failure to activate as was required	genuine issue precluding summary judgment.
by the GGPD General Orders 5.31.	However, undisputed for the purposes of the
Supporting Evidence: Exhibit C, Deposition of	present Motion.
Richard Gendreau, pp. 97- 98, 109: 20-23;	
Exhibit H, GGPD General Order 5.31.	
432. Both Officer Gendreau and Karschamroon	432. This is not a material fact creating a
testified they were trained on how to use a taser	genuine issue precluding summary judgment.
by then Sergeant Benedict Lux.	However, undisputed for the purposes of the
Supporting Evidence: Exhibit C, Deposition of	present Motion.
Richard Gendreau, pp. 151: 15; Exhibit B,	
Deposition of Daniel Karschamroon, pp. 136: 3-	
17.	
433. Mr. Lux testified that he had been a Taser	433. This is not a material fact creating a
instructor for the GGPD from 2002 until his	genuine issue precluding summary judgment.
retirement in 2010.	However, undisputed for the purposes of the

Supporting Evidence: Exhibit F, Deposition of	present Motion.
Benedict Lux, pp. 65: 1-9, 66: 1-3.	
434. Mr. Lux testified that during Taser training	434. This is not a material fact creating a
he would read verbatim GGPD General Order	genuine issue precluding summary judgment.
2.24 and make sure each trainee understood the	However, undisputed for the purposes of the
Order, he would show videos of taser	present Motion.
deployments and conduct a powerpoint	
presentation of proper and improper taser	
deployments.	
Supporting Evidence: Exhibit F, Deposition of	
Benedict Lux, pp. 151: 17-19, 153: 1, 199: 1-24.	
435. Mr. Lux testified that taser should never be	435. This is not a material fact creating a
used against Non Combative Subjects as	genuine issue precluding summary judgment.
defined in GGPD General Order 2.6: Use of	However, per the Plaintiff's evidence, Mr. Lux
Physical Force.	did not testify that that either officer
Supporting Evidence: Exhibit F, Deposition of	Karschamroon or Gendreau were, in his
Benedict Lux, pp. 176: 15-22,177:7-20,179:5-	opinion, in violation of General Order 2.6.
12,204: 1-25,205:1-15,206:9-22,209: 1-25,210:8-	
18, 211: 9-11,21: 13-18.	
436. 436. GGPD General Order 2.6 defines	436. This is not a material fact creating a
Non Combative Subjects as: (1) An individual	genuine issue precluding summary judgment.

does not respond to an officer's requests or	However, it is undisputed that General Order
does not respond to an officer's requests of	Trowever, it is unuisputed that General Order
commands and may be argumentative, or (2) An	2.6 exists, and that it is only as a guideline for
individual's verbal or non-verbal actions	officers.
indicate he is not complying with the officer's	
requests or demands, or (3) An individual is	
actively resisting handcuffing techniques, but is	
reasonably under control by the officer(s).	
Supporting Evidence: Exhibit H, GGPD	
General Order 2.6.	
437. Mr. Lux said an example of a Non	437. This is not a material fact creating a
Combative Subject would be someone who lies	genuine issue precluding summary judgment.
on their stomach with their hands beneath them in	However, per the Plaintiff's evidence, Mr. Lux
order to not be handcuffed	did not testify that that either officer
Supporting Evidence: Exhibit F, Deposition of	Karschamroon or Gendreau were, in his
Benedict Lux, pp. 178: 5-	opinion, in violation of General Order 2.6.

438. Mr. Lux testified that someone who may	438. This is not a material fact creating a
try to frustrate the handcuffing process but is	genuine issue precluding summary judgment.
not actively violent or assaultive would be a	However, per the Plaintiff's evidence, Mr. Lux
Non Combative Subject and should not be	did not testify that that either officer
tasered.	Karschamroon or Gendreau were, in his
Supporting Evidence: Exhibit F, Deposition of	opinion, in violation of General Order 2.6.
Benedict Lux, pp. 1 78: 5-14, 176: 15-22, 177:	
7-20, 178: 5-14, 179: 5-12, 204: 1-25, 205: 1-	
15, 206: 9-22,209: 1-25, 210: 8-18, 211: 9-	
11,21:13-18.	
439. Mr. Lux testified that he trained that tasers	439. This is not a material fact creating a
should be used with extreme caution against	genuine issue precluding summary judgment.
suspects believed to be under the influence of	However, per the Plaintiff's evidence, Mr. Lux
Central Nervous System stimulants because	did not testify that the tasing of Andy was
those suspects can suffer immediate death from	inappropriate, in his opinion.
the tasering.	
Supporting Evidence: Exhibit F, Deposition of	
Benedict Lux, pp. 252: 21-25, pp. 253: 1-3/5-	
12,254, 255: 1-5/12-15)	
440. Mr. Lux testified that he trained pursuant	440. This is not a material fact creating a
to GGPD General Order 2.24 that before a taser	genuine issue precluding summary judgment.

is used a Supervisor must be summoned before	However, per the Plaintiff's evidence, Mr. Lux
the use of taser and paramedics should be called	did not testify that the tasing of Andy was
before a taser is used.	inappropriate, in his opinion.
Supporting Evidence: Exhibit F, Deposition of	
Benedict Lux, pp. 249: 15-25,250:9-10,260: 13-	
25,262: 15-25, 263: 1-3; Exhibit H, GGPD	
General Order 2.24.	
441. Lux testified it would take 1-3 seconds to	441. This is not a material fact creating a
call for a supervisor or paramedics. (Exhibit F,	genuine issue precluding summary judgment.
Deposition of Benedict Lux, pp. 264: 4-11)	However, the General Orders do not "mandate,"
Garden Grove General Orders 2.6 and 2.24	but are provided as guidelines for the officers to
mandate that whenever a taser is used the	follow. Moreover, because the incident
involved officers must write a report	investigation was being conducted by the
documenting their use of a taser.	Orange County District Attorney's Office, no
Supporting Evidence: Exhibit H, GGPD	officer use of force report was implicated by the
General Order 2.24, 2.6	General Orders.
	Peaslee Depo., 9:14-19, 55:22-56:11, 58:12-20,
	61:3-25, General Orders, "Statement by the
	Chief of Police"

442. Mr. Lux testified that a Use of Force	442. This is not a material fact creating a
Memo addressed to the Chief of Police must be	genuine issue precluding summary judgment.
written by the Field Sergeant. Sergeant Wagner,	
following a taser deployment	
Supporting Evidence: Exhibit F, Deposition of	
Benedict Lux, pp. 81: 5-20, 82: 2-3/11-25, 83: 1-	
3,266: 12-18, 268: 7-18/19-25; Exhibit H, GGPD	
General Order 2.6, 2.24.	
443. Officer Gendreau testified that he does not	443. This is not a material fact creating a
believe a taser application to be painful.	genuine issue precluding summary judgment.
Supporting Evidence: Exhibit C,. Deposition	
of Richard Gendreau, pp. 310: 16.	
444. Officer Gendreau testified before he	444. This is not a material fact creating a
decided to Taser Andy he believed Andy was	genuine issue precluding summary judgment.
under the influence of a Central Nervous	However, Officer Gendreau testified that
System stimulant and knew that tasering Andy	Andy's aggressive appearance resembled
could cause Andy to die immediately.	individuals who are prone to throwing a punch.
Supporting Evidence: Deposition of Officer	Gendreau also testified that Andy resisted his
Gendreau, pp. 327: 17-22, 328:1-14,20-25, 329:	attempts to get his hands behind his back, and
1-18.	that the only way of subduing Andy was to taser
	him.

	Gendreau Depo., 178:5-16, 197:7-14, 220:21-
	24
445. Officer Gendreau testified he was trained	445. This is not a material fact creating a
to exercise caution when tasering someone	genuine issue precluding summary judgment.
appearing to be under the influence of a Central	However, Officer Gendreau testified that
Nervous System stimulant because tasering those	Andy's aggressive appearance resembled
subjects could cause their instant death.	individuals who are prone to throwing a punch.
Supporting Evidence: Exhibit C, Deposition of	Gendreau also testified that Andy resisted his
Richard Gendreau p, pp. 327: 17-22,328: 1-	attempts to get his hands behind his back, and
14/20-25,329: 1-18.	that the only way of subduing Andy was to taser
	him.
	Gendreau Depo., 178:5-16, 197:7-14, 220:21-
	24
446. Officer Gendreau said when he took out	446. This is not a material fact creating a
his taser Andy was not being violent towards he	genuine issue precluding summary judgment.
or Officer Karschamroon and he did not believe	However, Officer Gendreau testified that
Andy was attempting to assault anyone or to	Andy's aggressive appearance resembled
flee	individuals who are prone to throwing a punch.
Supporting Evidence: Exhibit C, Deposition of	Gendreau also testified that Andy resisted his
Richard Gendreau, pp. 174: 14-17; 176: 1-25,	attempts to get his hands behind his back, and
177: 1-10, 182: 2-23,187: 1-8,220: 1-24,225:	that the only way of subduing Andy was to taser

17-24,266:1-10.	him. Officer Karschamroon testified that when
	a handcuff was placed on Andy's right wrist,
	Andy "tensed" and Officer Karschamroon
	"could feel his fingers closing, kind of curling
	up from that interlocked position" and "close up
	as if the fingers were curling." Officer
	Karschamroon also stated in his deposition that
	Andy was "actively resisting" by not allowing
	his arms to be pulled apart and providing
	tension to pull his arms together, and that he
	"thought it might turn violent."
	Gendreau Depo., 178:5-16, 197:7-14, 220:21-
	24, Karschamroon Depo., 321:22-322:22,
	280:12-23, 362:12-17, 366:14-19
447. Officer Karschamroon told Internal Affairs	447. Plaintiff's evidence does not constitute a
and testified that he personally never saw a	genuine issue of material fact precluding
reason to take out a weapon against Andy and	summary judgment. However, Officer
he had no idea why Officer Gendreau was going	Karschamroon testified that he did not feel it
to taser Andy and he made no efforts to	was necessary to take out any weapon only up
determine why Officer Gendreau was	to the point of placing the first handcuff on
going to taser Andy.	Andy's wrist.

Supporting Evidence: Exhibit B, Deposition of	Karschamroon Depo., 251:21-252:6
Daniel Karschamroon, pp. 251: 17-25,252: 1-	
118,355: 21-24,357:3-18, 360: 1-6;	
Karschamroon GGPDInternal Affairs Interview,	
pp. 15.	
448. Officer Karschamroon testified that	448. This is not a material fact creating a
because Andy would not "calm down" Officer	genuine issue precluding summary judgment.
Karschamroon told him "hey Danny I'm just	However, Officer Gendreau testified that
going to tase him" to which Officer	Andy's aggressive appearance resembled
Karschamroon said "O.K." Supporting Evidence:	individuals who are prone to throwing a punch.
Exhibit B, Deposition of Daniel Karschamroon,	Gendreau also testified that Andy resisted his
pp., pp. 333: 18-25, 335: 9-20.	attempts to get his hands behind his back, and
	that the only way of subduing Andy was to taser
	him. Officer Karschamroon testified that when
	a handcuff was placed on Andy's right wrist,
	Andy "tensed" and Officer Karschamroon
	"could feel his fingers closing, kind of curling
	up from that interlocked position" and "close up
	as if the fingers were curling." Officer
	Karschamroon also stated in his deposition that
	Andy was "actively resisting" by not allowing

	his arms to be pulled apart and providing
	tension to pull his arms together, and that he
	"thought it might turn violent."
	Gendreau Depo., 178:5-16, 197:7-14, 220:21-
	24, Karschamroon Depo., 321:22-322:22,
	280:12-23, 362:12-17, 366:14-19
449. Mr. Lux said as the first responding officer	449. This is not a material fact creating a
Officer Karschamroon should have tried to	genuine issue precluding summary judgment.
determine why Officer Gendreau was going to	However, per the Plaintiff's evidence, Mr. Lux
deploy a taser.	did not testify that Officer Karschamroon
Supporting Evidence: Exhibit F, Deposition of	should have tried to determine why Officer
Benedict Lux, pp. 244: 14-25, 247: 21-25.	Gendreau was going to deploy a taser in the
	situation they encountered.
450. Officer Karschamroon testified the only	450. This is not a material fact creating a
thing Andy failed to do prior to being tasered	genuine issue precluding summary judgment.
was to "relax".	However, Officer Gendreau testified that
Supporting Evidence: Exhibit B, Deposition of	Andy's aggressive appearance resembled
Daniel Karschamroon, pp. 282, 300: 1-2, 383:	individuals who are prone to throwing a punch.
10-16.	Gendreau also testified that Andy resisted his
	attempts to get his hands behind his back, and
	that the only way of subduing Andy was to taser

him. Officer Karschamroon testified that when a handcuff was placed on Andy's right wrist, Andy "tensed" and Officer Karschamroon "could feel his fingers closing, kind of curling up from that interlocked position" and "close up as if the fingers were curling." Officer Karschamroon also stated in his deposition that Andy was "actively resisting" by not allowing his arms to be pulled apart and providing tension to pull his arms together, and that he "thought it might turn violent." Gendreau Depo., 178:5-16, 197:7-14, 220:21-24, Karschamroon Depo., 321:22-322:22, 280:12-23, 362:12-17, 366:14-19 451. Mr. Zimmerman testified he saw Officer 451. This is not a material fact creating a Gendreau step to Andy's side, withdraw his genuine issue precluding summary judgment. Taser and immediately fire the Taser into However, nothing in Zimmerman's testimony Andy's right thigh. disputes the officers' account of Andy's Supporting Evidence: Exhibit A, Deposition resistance other than his own speculation. of Mark Zimmerman, pp. 94:11-16, 104: 8-9, Further, Mark Zimmerman testified that Officer Gendreau did assist Officer Karschamroon by 107: 1-3/12-25, 118: 16-17;232: 10-14,238:816,276: 10-20.

putting "his hands on Andy's hands or on the other officer's hands or in that vicinity" for "about 20 seconds" in what appeared to him as an effort to "keep more control" of Andy. Zimmerman testified that he could see subtle movement going on between the officers and Andy and that there could have been a "whole 'nother [sic] set of scenarios going on" that he did not see. He could not hear what was being said, and although his eyesight is admittedly impaired, he never wears his prescription contact lens. Zimmerman observed the incident from a distance of approximately 40-50 feet could not tell what small, detailed movements were occurring. He does not know whether the officers tried to move Andy's hands from the top of his head, and admits that many things could have been said or done which he could not observe or hear. While Zimmerman testified that Andy's hands were on his head at

	all times, he cannot say whether there was any
	kind of struggle
	Zimmerman Depo., 22:3-7, 82:11-18, 92:19-25,
	93:16-19, 96:2-10, 100:7-20, 162:11-19, 187:3-
	11, 200:11-24, 201:6-12, 209:7-22, 217:3-9,
	222:11-223:13, 276:22-25, 287:25-288:12.
452. Mr. Zimmerman said he heard a loud	452. This is not a material fact creating a
"pop" and Andy fell forward "like a sack of	genuine issue precluding summary judgment.
potatoes" and landed face down on his stomach	
hitting the ground very hard hard.	
Supporting Evidence: Exhibit A, Deposition	
of Mark Zimmerman, pp. 108: 1-11/18-24, 110:	
1-13,240: 21-25, 242: 13-25,243: 11-16.	
453. Mr. Zimmerman said because Andy's shirt	453. This is not a material fact creating a
was too small and tight part of Andy's stomach	genuine issue precluding summary judgment
became exposed when he hit the ground	
Supporting Evidence: Exhibit A, Deposition of	
Mark Zimmerman, pp. 111: 10-1 7, 244: 12-15.	
454. Both Mr. Zimmerman and Andy's	454. Plaintiff's evidence does not constitute a
mother, Ms. Bua Phan, both said Andy	genuine issue of material fact precluding
showed absolutely no signs of life when	summary judgment; it is immaterial in light of

he hit the ground and both believed he was dead	Andy's actual resistance while being detained,
when he hit the ground.	and the totality of the circumstances confronting
Supporting Evidence: Exhibit A, Deposition of	the officers during that detention. Zimmerman
Mark Zimmerman, pp. 110: 1-13/22-25, 111: 10-	has had no medical training. Although his
17/18-22,112:25; .Exhibit E, Deposition of Bua	eyesight is admittedly impaired, he never wears
Thi han, pp. 243.1: 16-18.	his prescription contact lens. Zimmerman
	observed the incident from a distance of
	approximately 40-50 feet and could not tell
	what small, detailed movements were occurring.
	Zimmerman testified that it was possible that
	Andy was breathing after being tased and that
	he just did not observe it, and that his belief that
	Andy was dead is not based on any actual
	evidence.
	Zimmerman Depo., 22:3-7, 162:11-19, 180:20-
	21; 201:6-12, 293:23-294:12
455. Mr. Zimmerman said he was very	455. Plaintiff's evidence does not constitute a
concerned because he saw no reason for	genuine issue of material fact precluding
Andy to be Tasered and that after he was	summary judgment; it is immaterial in light of
Tasered he was clearly not moving or	Andy's actual resistance while being detained,
breathing.	the totality of the circumstances confronting the

Supporting Evidence: Exhibit A, Deposition of Mark Zimmerman, pp. 110: 1-13/22-25, 111: 10-17/18-22, 112:25, 114: 9-25, 115: 12-17, 124: 1-12/17-25, 125: 1-19.

officers during that detention, and in light of the undisputed fact that GG Fire Department Paramedics were promptly summoned. Further, Officer Karschamroon testified that when a handcuff was placed on Andy's right wrist, Andy "tensed" and Officer Karschamroon "could feel his fingers closing, kind of curling up from that interlocked position" and "close up as if the fingers were curling." Officer Karschamroon also stated in his deposition that Andy was "actively resisting" by not allowing his arms to be pulled apart and providing tension to pull his arms together, and that he "thought it might turn violent." Nothing in Plaintiffs' cited testimony disputes that Andy continued to resist after Gendreau arrived. Further, Mark Zimmerman testified that Officer Gendreau did assist Officer Karschamroon by putting "his hands on Andy's hands or on the other officer's hands or in that vicinity" for

"about 20 seconds" in what appeared to him as an effort to "keep more control" of Andy. This is not a material fact creating a genuine issue precluding summary judgment. However, Officer Gendreau testified that Andy's aggressive appearance resembled individuals who are prone to throwing a punch. Gendreau also testified that Andy resisted his attempts to get his hands behind his back, and that the only way of subduing Andy was to taser him. Nothing in Zimmerman's testimony disputes the officers' account of Andy's resistance other than his own speculation. Karschamroon Depo., 321:22-322:22, 280:12-23, 362:12-17, 366:14-19, Gendreau Depo., 178:5-16, 197:7-14, 220:21-24, Zimmerman Depo., 22:3-7, 82:11-18, 92:19-25, 93:16-19, 96:2-10, 100:7-20, 162:11-19, 187:3-11, 200:11-24, 201:6-12, 209:7-22, 217:3-9, 222:11-223:13, 276:22-25, 287:25-288:12.

456. Mr. Zimmerman testified that the three	456. Plaintiff's evidence does not constitute a
officers stood around doing nothing to help	genuine issue of material fact precluding
Andy and appeared to become increasingly	summary judgment; it is immaterial in light of
concerned with the Andy was not moving.	the undisputed fact that GG Fire Department
Supporting Evidence Evhibit A. Denegition	Paramedics were promptly summoned. In any
Supporting Evidence: Exhibit A, Deposition	event, Zimmerman has had no medical training,
of Mark Zimmerman, pp. 123: 15-25, 246: 7-	and although his eyesight is admittedly
19.	impaired, he never wears his prescription
	contact lens. Zimmerman observed the incident
	from a distance of approximately 40-50 feet and
	could not tell what small, detailed movements
	were occurring. Zimmerman testified that it
	was possible that Andy was breathing after
	being tased and that he just did not observe it,
	and that his belief that Andy was dead is not
	based on any actual evidence. Zimmerman
	Depo., 22:3-7, 162:11-19, 180:20-21; 201:6-
	12, 293:23-294:12
457. Mr. Zimmerman testified that Officer	457. Plaintiff's evidence does not constitute a
Gendreau leaned over Andy and slapped him	genuine issue of material fact precluding

	T
several times of the face saying words to the	summary judgment; it is immaterial in light of
effect for Andy to "stop faking."	the undisputed fact that GG Fire Department
Supporting Evidence: Exhibit A, Deposition of	Paramedics were promptly summoned. In any
Mark Zimmerman 121: 6-11/15-24.	event, Zimmerman has had no medical training,
With Zimmerman 121. 0 11/13 21.	and although his eyesight is admittedly
	impaired, he never wears his prescription
	contact lens. Zimmerman observed the incident
	from a distance of approximately 40-50 feet and
	could not tell what small, detailed movements
	were occurring. Zimmerman testified that it
	was possible that Andy was breathing after
	being tased and that he just did not observe it,
	and that his belief that Andy was dead is not
	based on any actual evidence.
	Zimmerman Depo., 22:3-7, 162:11-19, 180:20-
	21; 201:6-12, 293:23-294:12
458. Officer Karschamroon testified that Officer	458. Plaintiff's evidence does not constitute a
Gendreau leaned down and opened up Andy's	genuine issue of material fact precluding
closed eyes and at that time Officer	summary judgment; it is immaterial in light of
Karschamroon testified he could not tell if Andy	the undisputed fact that GG Fire Department

was breathing.	Paramedics were promptly summoned.
Supporting Evidence: Exhibit B, Deposition of	However, in the testimony cited by Plaintiff's
Daniel Karschamroon, pp. 397: 7-8.	Officer Karschamroon testified he "could not
	recall" whether Andy was breathing when
	Gendreau open his eyelids.
	Karschamroon Depo., 397:7-8
459. Mr. Zimmerman testified that Officers	459. Plaintiff's evidence does not constitute a
Karschamroon, Gendreau and EI-Farra all	genuine issue of material fact precluding
remained outside near Andy until the	summary judgment; it is immaterial in light of
paramedics arrived; this is contrary to Officers	the undisputed fact that GG Fire Department
Karschamroon and Gendreau's Declarations that	Paramedics were promptly summoned.
they went inside Andy's house and came out	However, Zimmerman "thinks" Officers
"surprised" to learn that Andy was in full	Karschamroon and Gendreau remained with
cardiac arrest.	Andy until the paramedics arrived but concedes
Supporting Evidence: Exhibit A, Deposition of	he lost track of them.
Mark Zimmerman, pp. 251: 4, 264: 18-25, 265:	
5-14/18-25, 267: 6-8.	Zimmerman Depo., 264:18-23, 267:12-14,
	307:21-25

460. Mr. Zimmerman testified he saw the police roll Andy's lifeless body into a seated position leaning against an officers legs and he could clearly see Andy's chest and stomach Andy and could see Andy was neither moving nor breathing.

Supporting Evidence: Exhibit A, Deposition of Mark Zimmerman, pp. 110: 1-13/22-25, 111: 10-17/18-22, 112:25, 114: 9-25, 115: 12-17, 124: 1-12/17-25, 125: 1-19.

461. Officer Gendreau declared in paragraph 26 that he contacted dispatch in order for a supervisor and medics to arrive "pursuant to GPD 460. Plaintiff's evidence does not constitute a genuine issue of material fact precluding summary judgment; it is immaterial in light of the undisputed fact that GG Fire Department Paramedics were promptly summoned. However, Zimmerman has had no medical training. Although his eyesight is admittedly impaired, he never wears his prescription contact lens. Zimmerman observed the incident from a distance of approximately 40-50 feet and could not tell what small, detailed movements were occurring. Zimmerman testified that it was possible that Andy was breathing after being tased and that he just did not observe it, and that his belief that Andy was dead is not based on any actual evidence Zimmerman Depo., 22:3-7, 162:11-19, 180:20-

21; 201:6-12, 293:23-294:12

461. Plaintiff's evidence does not constitute a genuine issue of material fact precluding summary judgment; it is immaterial in light of

policy and my training". However, the supervisor,	the undisputed fact that GG Fire Department
Sergeant Wagner wrote he was not requested	Paramedics were promptly summoned. Further,
until 11:46, 8 minutes or more minutes post	the Plaintiffs do not dispute that Officer
tasering.	Gendreau called a supervisor.
Supporting Evidence: Exhibit C, Deposition of	
Richard Gendreau, pp. 280: 8-13; Exhibit K,	
Sergeant Wagner's police report.	
462. Further, paramedics were not dispatched	462. Plaintiff's evidence does not constitute a
until 11:39:48 and arrived at Andy's house at	genuine issue of material fact precluding
11 :44.	summary judgment; it is immaterial in light of
Supporting Evidence: Exhibit D, Deposition of	the undisputed fact that GG Fire Department
Richard Fukumoto, M.D., pp.90: 13-16,282:7-	Paramedics were promptly summoned.
15,283:4-16/21-23.	However, undisputed for the purposes of the
	present Motion.
463. When paramedics arrived Andy was in full	463. Plaintiff's evidence does not constitute a
cardiac arrest; meaning he had no heart beat and	genuine issue of material fact precluding
was not breathing.	summary judgment; it is immaterial in light of
Supporting Evidence: Exhibit D,	the undisputed fact that GG Fire Department
Deposition of Richard Fukumoto, M.D.,	Paramedics were promptly summoned.
pp.90: 13-16,282:7-15,283:4-16/21-	However, undisputed for the purposes of the

23.	present Motion.
464. The first responding paramedic	464. Plaintiff's evidence does not constitute a
immediately ordered the handcuffs on ndy to be	genuine issue of material fact precluding
removed.	summary judgment; it is immaterial in light of
Supporting Evidence: Exhibit A, Deposition of	the undisputed fact that GG Fire Department
Mark Zimmerman, pp.136: 2-6, 139: 22-25	Paramedics were promptly summoned.
	However, undisputed for the purposes of the
	present Motion.
465. GGPD General Order 2.6 and 2.24	465. This is not a material fact creating a
required Officers Karschamroon and Gendreau	genuine issue precluding summary judgment.
to either (1) write a report about the use of force	However, the General Orders do not "mandate,"
that resulted in an in-custody death or (2)	but are provided as guidelines for the officers to
provide a statement to Orange County District	follow. Moreover, because the incident
Attorney (hereinafter "OCDA") Investigators.	investigation was being conducted by the
Supporting Evidence: Exhibit H, GGPD	Orange County District Attorney's Office, no
General Order 2.6, 2.24.	officer use of force report was implicated by the
	General Orders.
	Peaslee Depo., 9:14-19, 55:22-56:11, 58:12-20,
	61:3-25, General Orders, "Statement by the
	Chief of Police"
466. Both Officer Karschamroon and	466. Plaintiff's evidence does not constitute a

Gendreau stated they did not write reports about	genuine issue of material fact precluding
the incident and refused to provide an interview	summary judgment. However, undisputed for
to investigators from the OCDA's Office.	the purposes of the present Motion.
Supporting Evidence: Exhibit B, Deposition of	
Daniel Karschamroon, pp. 210: 21-24,212: 19-	
25; Exhibit C, Deposition of Richard Gendreau,	
pp. 316: 1-10,317: 1.	
467. Officer Gendreau testified that after	467. Plaintiff's evidence does not constitute a
he refused to be interviewed by investigators	genuine issue of material fact precluding
from the OCDA's Office he spoke with then	summary judgment. However, undisputed for
Sergeant and now Lieutenant Ted Peaslee.	the purposes of the present Motion.
Supporting Evidence: Exhibit C, Deposition of	
Richard Gendreau, pp. 323: 3-6	
468. Lieutenant Peaslee had been assigned to	468. Plaintiff's evidence does not constitute a
the Crimes Against Persons Unit of the GGPD	genuine issue of material fact precluding
on September 3, 2008.	summary judgment. However, undisputed for
Supporting Evidence: Exhibit C, Deposition of	the purposes of the present Motion.
Richard Gendreau, pp. 320: 14-16.	
469. Lieutenant Peaslee testified that Sergeant	469. Plaintiff's evidence does not constitute a
Wagner who was the Field Supervisor at the	genuine issue of material fact precluding

scene called him and told him a subject had	summary judgment. However, because the
been tasered, the subject was in full cardiac	incident investigation was being conducted by
arrest, the subject was on his way to the hospital	the Orange County District Attorney's Office,
and not expected to live and he wanted someone	no officer use of force report was implicated by
from the Crimes against Persons Unit to	the General Orders.
respond to the location.	Peaslee Depo., 9:14-19, 55:22-56:11, 58:12-20,
Supporting Evidence: Exhibit G, Deposition of	61:3-25, General Orders, "Statement by the
Ted Peaslee, pp. 16: 6-8, 43: 20-25, 44: 1-5.	Chief of Police"
470. Lieutenant Peaslee testified that he	470. Plaintiff's evidence does not constitute a
instructed Officer Gendreau to not write a	genuine issue of material fact precluding
report about his taser use and allegedly did not	summary judgment. However, because the
inquire whether Officer Gendreau had already	incident investigation was being conducted by
refused to be interviewed by the OCDA's	the Orange County District Attorney's Office,
Office. "	no officer use of force report was implicated by
Supporting Evidence: Exhibit G, Deposition of	the General Orders.
Ted Peaslee, pp. 90: 8-17.	Peaslee Depo., 9:14-19, 55:22-56:11, 58:12-20,
	61:3-25, General Orders, "Statement by the
	Chief of Police"
471. Officer Karschamroon also stated	471. Plaintiff's evidence does not constitute a
Lieutenant Peaslee also instructed him to not	genuine issue of material fact precluding
write a report about the force used against	summary judgment. Because the incident

Andy.	investigation was being conducted by the
Supporting Evidence: Exhibit L, Daniel	Orange County District Attorney's Office, no
Karschamroon's Response to Request for	officer use of force report was implicated by the
Admissions, number 39.	General Orders.
	Peaslee Depo., 9:14-19, 55:22-56:11, 58:12-20,
	61:3-25, General Orders, "Statement by the
	Chief of Police"
472. GGPD General Orders 2.6 and 2.24	472. Plaintiff's evidence does not constitute a
require a Use of Force Memo to be written by a	genuine issue of material fact precluding
Field Supervisor to the Chief of Police after a	summary judgment. Because the incident
taser deployment and a use of force resulting in	investigation was being conducted by the
a death.	Orange County District Attorney's Office, no
Supporting Evidence: Exhibit H, GGPD	officer use of force report was implicated by the
General Order 2.6, 2.24.	General Orders.
	Peaslee Depo., 9:14-19, 55:22-56:11, 58:12-20,
	61:3-25, General Orders, "Statement by the
	Chief of Police"
473. Sergeant Wagner was the Field Supervisor	473. Plaintiff's evidence does not constitute a
who responded to the scene following the	genuine issue of material fact precluding
tasering of Andy.	summary judgment. However, undisputed for
Supporting Evidence: Exhibit G, Deposition of	the purposes of the present Motion.

Ted Peaslee, pp. 16: 5-10.	
474. However, Sergeant Wagner never wrote a	474. Plaintiff's evidence does not constitute a
Use of Force Memo addressed to the Chief of	genuine issue of material fact precluding
Police as required by GGPD General Order 2.6	summary judgment. Because the incident
and 2.24.	investigation was being conducted by the
Supporting Evidence: Exhibit F, Deposition of	Orange County District Attorney's Office, no
Benedict Lux, pp. 82: 2-3/11-25.	officer use of force report was implicated by the
	General Orders.
	Peaslee Depo., 9:14-19, 55:22-56:11, 58:12-20,
	61:3-25, General Orders, "Statement by the
	Chief of Police"
475. Sergeant Wagner did take statements from	475. Plaintiff's evidence does not constitute a
Officers Gendreau and Karschamroon when the	genuine issue of material fact precluding
paramedics were still present at the scene and	summary judgment. However, undisputed for
Sergeant Wagner told Leutenant Peaslee hen he	the purposes of the present Motion.
arrived on scene what the officers had said.	
Supporting'Eviden'ce: Exhibit G, Deposition of	
Ted Peaslee, pp. 221-222:1-25.	
476. Leutenant Peaslee told Sergeant Wagner to	476. Plaintiff's evidence does not constitute a
write a report about what the officers told him	genuine issue of material fact precluding

and he reviewed the report later and found no	summary judgment. However, undisputed for
difference from what Sergeant Wagner told him	the purposes of the present Motion.
at the scene.	
Supporting Evidence: Exhibit G, Deposition of	
Ted Peaslee, pp. 212: 20-15,221-222: 11-1.	
477. Sergeant Wagner's report is devoid of any	477. Plaintiff's evidence does not constitute a
statements by Officer Gendreau and/or	genuine issue of material fact precluding
Karschamroon about Officer Gendreau ever	summary judgment. However, undisputed for
touching Andy at any time and there are no	the purposes of the present Motion.
statements concerning Officers Gendreau and/or	
Karschamroon struggling to get Andy's hand	
behind his back	
Supporting Evidence: Exhibit K, Sergeant	
Wagner's police report.	
478. Sergeant Wagner ultimately sent Officer	478. Plaintiff's evidence does not constitute a
Gendreau to the following the paramedics to the	genuine issue of material fact precluding
hospital and Officer Gendreau's IVS Unit was	summary judgment. However, undisputed for
functioning at that point because Officer	the purposes of the present Motion.
Gendreau's IVS Unit recorded his trip to the	
hospital.	
Supporting Evidence: Sergeant Wagner	

police report. Defense Exhibit 1, CD Copy of	
Officer Gendreau's IVS Unit attached.	
479. On September 4, 2008, Orange County	479. Plaintiff's evidence does not constitute a
Forensic Pathologist Dr. Richard Fukumoto	genuine issue of material fact precluding
performed an autopsy on the body of Andy	summary judgment. However, undisputed for
Tran.	the purposes of the present Motion.
Supporting Evidence: Exhibit 0, Deposition of	
Richard Fukumoto, M.D., pp. 30: 15-25.	
480. Dr. Fukumoto has been a Forensic	480. Plaintiff's evidence does not constitute a
Pathologist since 1965 and haspersonally	genuine issue of material fact precluding
performed more than 15,000 autopsies.	summary judgment. However, undisputed for
Supporting Evidence: Exhibit 0, Deposition of	the purposes of the present Motion.
Richard Fukumoto, M.D., pp.17:4-14,26:9-16.	
481. Dr. Fukumoto has performed numerous	481. Plaintiff's evidence does not constitute a
autopsies involving police involved in-custody	genuine issue of material fact precluding
deaths including deaths following taserings.	summary judgment. However, Dr. Fukumoto
Supporting Evidence: Exhibit D, Deposition of	has only been involved in only two cases where
Richard Fukomoto, M.D., pp. 58: 3-6/23-25, 59:	deaths were related to tasering.
5-15, 60: 11-15, 61: 1,215:15-20, 216: 15-18.	Fukumoto Depo., 216:10-18

482. Dr. Fukumoto has done extensive	482. Plaintiff's evidence does not constitute a
research on the effects oftasering on the human	genuine issue of material fact precluding
body prior to the time of Andy Tran's autopsy.	summary judgment. However, undisputed for
Supporting Evidence: Exhibit D, Deposition of	the purposes of the present Motion.
Richard Fukumoto, M.D., pp.304: 1-3/16-	
18,305: 8-25,306: 1-2/10-14,307: 1-8/22-	
25,308: 5-7,309:1-5/18-22.	
483. In preparation for his deposition	483. Plaintiff's evidence does not constitute a
testimony Dr. Fukumoto fully reviewed all	genuine issue of material fact precluding
relevant files including the deposition transcript	summary judgment. However, undisputed for
of Officer Karschamroon.	the purposes of the present Motion.
Supporting Evidence: Exhibit D, Deposition of	
Richard Fukumoto, M.D., pp. 141: 5-25, 142: 6-	
7, 143: 2-3.	
484. Dr. Fukumoto, who has been deemed an	484. Plaintiff's evidence does not constitute a
expert in interpreting blood toxicology results,	genuine issue of material fact precluding
testified that Andy blood results showed no	summary judgment. However, undisputed for
presence of alcohol or controlled substances but	the purposes of the present Motion.
it did show the presence of several psychiatric	
medications which were within thereuputic	
levels and also showed the presence of	

diphenhydramine (Benedryl).	
Supporting Evidence: Exhibit D, Deposition of	
Richard Fukumoto, M.D., pp.228: 13-	
25,229:20-25,239: 10-14:19-25,240: 1-25,243:	
1-25,245: 17-18:19-25, 347: 1-4.	
485. Dr. Fukumoto testified that no drug	485. Plaintiff's evidence does not constitute a
found in Andy's system was the cause of	genuine issue of material fact precluding
his death.	summary judgment. However, undisputed for
Supporting Evidence: Exhibit D, Deposition of	the purposes of the present Motion.
Richard Fukumoto, M.D., pp.97:6-19,228: 13-	
25,229:20-25, 239: 10-14: 19-25, 240: 1-25,	
243: 1-25, 245: 17-18: 19-25,347: 1-4.	
486. Dr. Fukumoto described this case as	486. Plaintiff's evidence does not constitute a
not very complicated based upon the extensive	genuine issue of material fact precluding
records he reviewed and compare with other	summary judgment. However, undisputed for
cases.	the purposes of the present Motion
Supporting Evidence: Exhibit 0, Deposition of	
Richard Fukumoto, M.D., pp.161:9-24.	

487. Dr. Fukumoto testified that based on the	487. Plaintiff's evidence does not constitute a
observations of Officer Karschamroon prior to	genuine issue of material fact precluding
the tasering event their is no indication Andy	summary judgment. However, Dr. Fukumoto
was suffering from cardiac symptoms prior to	stated Andy already had a bad heart and liver
the time he was tasered.	and he has no way of knowing when Andy died.
Supporting Evidence: Exhibit 0, Deposition of	Fukumoto Depo., 187:19-188:5, 206:23 -
Richard Fukumoto, M.D., pp. 260: 1-10,317: 5-	207:11, 258:7-259:25
25,318: 11-16, 370: 1-8,370:20-25,372:3-12.	
488. Dr. Fukumoto did find Andy had an	488. Plaintiff's evidence does not constitute a
enlarged heart which placed him at a greater	genuine issue of material fact precluding
risk of a cardiac event but determined Andy did	summary judgment. However, Dr. Fukumoto
not die from an enlarged heart but rather the	testified that a relatively healthy person being
circumstances he encountered during his	tased by a single discharge of taser for 5
contact with the police which overloaded	seconds would not have caused death, and that
it, i.e. the tasering.	Andy's enlarged heart was a factor in his death.
Supporting Evidence: Exhibit D, Deposition of	Fukumoto Depo., 207:12 – 209:16
Richard Fukumoto, M.D., pp.63: 1-8,66: 18-	
22,67:4-5,98:5- 10/20-22,296: 1-7,311: 22-	
23,355: 2-9, 367: 19-25, 368: 1-2.	

489. Dr. Fukumoto testified that people with	489. Plaintiff's evidence does not constitute a
similarly enlarged hearts can live long lives.	genuine issue of material fact precluding
Supporting Evidence: Exhibit D, Deposition of	summary judgment. However, Dr. Fukumoto
Richard Fukumoto, M.D., pp. 96: 8-11.	testified that he believes Andy would have had
	a less than normal life span due to his enlarged
	heart and liver disease.
	Fukumoto Depo., 346:3-12
490. Dr. Fukumoto ultimately testified that in	490. Plaintiff's evidence does not constitute a
his opinion Andy died as a result of his struggle	genuine issue of material fact precluding
with law enforcement which was limited to the	summary judgment. However, Dr. Fukumoto
tasering event.	testified that a relatively healthy person being
Supporting Evidence: Exhibit D, Deposition of	tased by a single discharge of taser for 5
Richard Fukumoto, M.D., pp.63: 1-8,66: 18-	seconds would not have caused death, and that
22,67:4-5,260: 1-10,296: 1-7,311: 22-23, 355:	Andy's enlarged heart was a factor in his death.
2-9.	Fukumoto Depo., 207:12 – 209:16

491. Dr. Fukumoto testified that the records from the paramedics reasonably show that Andy died almost immediately after the tasering event because the tasering happened around 11:38 a.m., paramedics vy~re dispatched at 11:39:38, the paramedics arrived around 11:43 a.m. and when they arrived Andy was in full cardiac arrest and his eyes were fixed and dilated.

Supporting Evidence: Exhibit 0, Deposition of Richard Fukumoto, M.D., pp.90: 13-16,282: 7-15,283:4-16/21-23.

492. Dr. Fukumoto explained that once a person goes into full cardiac arrest the brain can continue to function for six to eight minutes and the fact that Andy's eyes were fixed and dilated is an indication that brain activity has totally ceased indicated Andy went into full cardiac arrest immediately following the tasering; which is consistent with the observations of Mr.

491. Plaintiff's evidence does not constitute a genuine issue of material fact precluding summary judgment. However, Dr. Fukumoto testified that a relatively healthy person being tased by a single discharge of taser for 5 seconds would not have caused death, and that Andy's enlarged heart was a factor in his death. Dr. Fukumoto also testified that he has no way of knowing when Andy died and that he relies on the physician's death pronouncement as to the time of death.

Fukumoto Depo., 187:19-188:5, 206:23 - 209:16, 258:7-259:25

492. Plaintiff's evidence does not constitute a genuine issue of material fact precluding summary judgment; it is immaterial in light of the undisputed fact that GG Fire Department Paramedics were promptly summoned.

However, Zimmerman has had no medical training, and although his eyesight is admittedly impaired, he never wears his prescription

Zimmerman, Ms. Phan.

Supporting Evidence: Exhibit D, Deposition of Richard Fukumoto, M.D., pp.90: 13-16,258: 16-19"pp.280: 19-25,281: 10-25,282: 7-15,283: 4-16/21-23; Exhibit A, Deposition of Mark Zimmerman, pp. 110: 1-13/22-25, 111: 10-17/18-22, 112: 25, 114: 9-25, 115:12-17, 124: 1-12/17-25, 125: 1-19; Exhibit E, Deposition of Bua Thi Phan, pp. 256.1: 2-5.

contact lens. Zimmerman observed the incident from a distance of approximately 40-50 feet and could not tell what small, detailed movements were occurring. Zimmerman testified that it was possible that Andy was breathing after being tased and that he just did not observe it, and that his belief that Andy was dead is not based on any actual evidence.

Zimmerman Depo., 22:3-7, 162:11-19, 180:20-21; 201:6-12, 293:23-294:12

493. Dr. Fukumoto also testified that if the police did see Andy was suffering from labored breathing, breathing rapidly and/or breathing heavily these would have been a clear indications Andy was suffering cardiac distress (cardiac arrhythmia) which would have been further exacerbated by Andy's hands being handcuffed behind his back based upon Andy's body size and the handcuffs would have limited his ability to breath fully.

493. Plaintiff's evidence does not constitute a genuine issue of material fact precluding summary judgment; it is immaterial in light of the undisputed fact that GG Fire Department Paramedics were promptly summoned. However, Dr. Fukumoto testified that recognizing symptoms is an important aspect and that "cops" are not doctors.

Fukumoto Depo., 253:13-255:5

Supporting Evidence: Exhibit D, Deposition of Richard Fukumoto, M.D., pp. 63: 1-8, 66: 18-22, 67: 4-5, 90: 13- 16/21-23, 260: 1-10,283: 4-16,296: 1-7, 311:22-23,317:5-25,318: 11-16,355:2-9,367: 19-25,368: 1-2,370: 1-8,370: 20-25, 372: 3-12, 282: 7-15. 494. Plaintiff's evidence does not constitute a genuine issue of material fact precluding summary judgment; it is immaterial in light of the undisputed fact that GG Fire Department Paramedics were promptly summoned. However, Dr. Fukumoto testified that a relatively healthy person being tased by a single discharge of taser for 5 seconds would not have caused death, and that Andy's enlarged heart was a factor in his death. Dr. Fukumoto also testified that he has no way of knowing when Andy died and that he relies on the physician's death pronouncement as to the time of death. Fukumoto Depo., 187:19-188:5, 206:23 -

200 16 250 7 250 25
209:16, 258:7-259:25